

LOKAMANYA BAL GANGADHAR TILAK

LANDMARKS IN LOKAMANYA'S LIFE

By

N. C. KELKAR

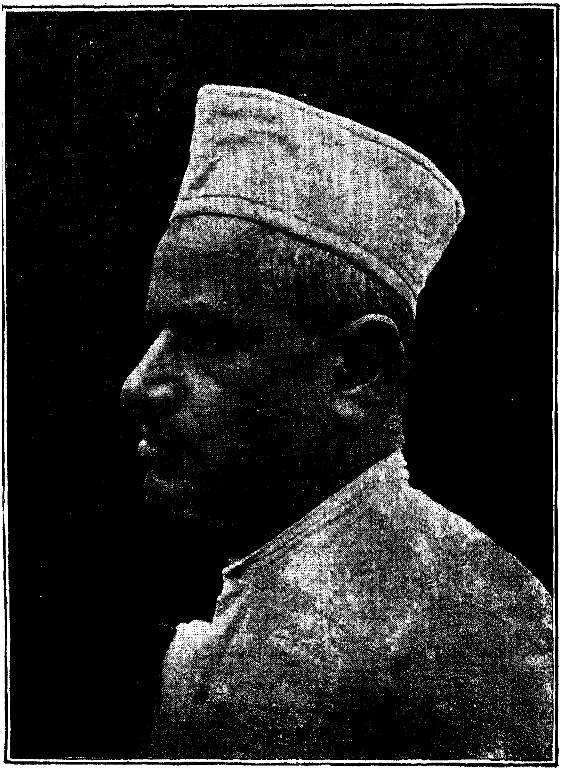
S. GANESAN

PUBLISHER, TRIPLICANE, MADRAS, S.E.

1924

CONTENTS

THE HUXLEY PRESS, MADRAS



N. C. KELKAR

FOREWORD

TO the material supplied by me for the booklet, Mr. Ganesan has given an apt and also alliterative title, namely, 'Landmarks in Lokamanya's Life'! Yes, my articles from the *Mahratta,* reprinted in this volume, and extending over a range of some 24 years, really point to landmarks in a memorable panoramic life. They do not depend for their capacity to impress the reader on any adventitious aid that I may have given them by my style or spirit, but they have an inherent and peremptory command of their own. The barest facts mentioned in my articles, even if bereft of all their literary drapery, are bound to challenge the respect of the sceptic and the cynic. Landmarks in Tilak's life are not the footprints of mediocrity ; not the faint arrow-heads on sand made one moment by the light-footed hopping sea gull, and washed off the next by the first racing wave of the advancing tide. They are like rocks which successfully struggle for ages with the sea in all the fury of its anger, or the seductive operation of its erosive power.

The articles in this booklet were written by me as Editor of the *Mahratta* on different occasions marked by something extraordinary which happened to Lok. Tilak and which could, without impropriety, be discussed even in his own papers as topics of public interest. But perhaps I may be wrong in describing these occasions in this negative fashion. For they were, as all know, dealt with nearly in the same spirit at the same time by Indian public journals in every other part of India and that even whether they agreed or not with Lok. Tilak's politics.

Thus his arrest and prosecution in 1897 was a sensation that nearly pulled the mind of the country by its roots, as political prosecutions were then extremely rare, and Tilak was, in himself, a man big enough to mark an epoch by his personal misfortune. His incarceration of 12 months was punctuated by uncommon incidents like the very relevant trials of the murderers of Messrs. Rand and Ayerst, the remarkable clemency movement started by savants like Max Muller, and consequently his release was an all-India sensation again, though this time of an agreeable nature.

Very soon after Tilak settled down to his ordinary affairs, came up the Tai Maharaj Case which threatened to hit at him on the side of his personal character. A conviction for perjury would certainly be calculated to undermine all the prestige that he had acquired by a political prosecution. That was an obvious reason why Government caught at the opportunity; and they even succeeded in damning Tilak in the public eye for some time, till the High Court came to his rescue, set aside his conviction and wiped off all the criminal charges brought up against him. Ultimately, he also won the civil suit in the Privy Council and thus established his bonafides with a vengeance. It was Tilak's lot, if also his own favourite method, to welcome, face, and eventually conquer opposition, and so shine upon a back-ground which his opponent himself helped to supply. The Tai Maharaj Case, gratuituously and spitefully forced upon him by Government, only enabled him to display some very extraordinary qualities of head and heart bearing upon his private life, which he might not have otherwise been able to do.

Tilak's prosecution again in 1908 was a sensation much bigger than his prosecution in 1897. In 1897, he

was taken to be only an individual seditionary. In 1908 he was looked upon as a type and a representative--a plausible emblem of a dangerous movement more formidable than any that Government ever felt called upon to face and suppress.

But his conviction and transportation for six long years did not finish him as was wished for by some and apprehended by others. He returned to the scene with, if anything, greater power to his elbow. The attempt of Government failed miserably—the attempt to smother and supress him by the simple but momentous declaration that Tilak was an enemy of the administration. His production of a brilliant philosophical treatise on the *Gita* written in the jail idolized him as never before in the eyes of his Hindu countrymen, and the collapsing condition of the Congress in the hands of the Moderates afforded him the psychological moment to rejoin it, if only to conquer it.

The Home Rule agitation carried on by Tilak in co-operation with Mrs. Besant is the next landmark in his life; and though Mrs. Besant was interned for a time, the ill-advised prosecution of Tilak by Lord Willingdon's Government enabled him not only to strike the popular imagination with greater effect, but also to turn his acquittal by the High Court to good account in constitutionally and firmly establishing the right of the Indian people to demand the whole Swaraj and nothing but Swaraj; and to deprive the bureaucracy of the protection from criticism which they thought they could claim by their legally fictitious identification with the Government itself.

His jubilee, when Tilak attained his sixtieth year, was marked by an event unparalleled throughout India. He was on this occasion given by his friends and

admirers in the Maharashtra a purse of one lac of rupees which he, of course, 'touched and remitted' like a Nazarana, not without adding a mite of his own to it, to be funded into an investment so that Trustees holding it could perpetually be able to spend about five thousand rupees annually on some purpose of national importance.

The Chirol case which Tilak lodged and lost in England was the next landmark in his life. It was a bold bid and a big game that he played. The loss of the suit nearly involved him in bankruptcy. But once more his friends and admirers rose to the occasion and while he was yet in England, they raised a fund of 3 lacs of rupees which covered all his expenses. Tilak's visit to England was for himself an unique event, though many people had gone to that land before for pleading the cause of India. He was, of course, of no use for influencing the Government. But he was the first to cement the bonds of interest and friendship between the Indian Nationalist Party and the British Labour Party which was then emerging into hopeful prominence. Tilak died before he could visualise the effects of the policy of Responsive Co-operation. But he died at the height of his glory and when the whole Indian nation was feeling that they wanted him very badly.

Tilak was drawn by the painter Nature with some of the boldest and most striking touches of her brush. The landmarks of his life are so conspicuous that they will still stand, abide, and will have to be reckoned with, even when a new lay-out will be designed and new scenes will be enacted on the field of public life on which he once figured like a flaming torch of fiery patriotism.

POONA
22nd July 1924

N. C. KELKAR

LANDMARKS IN LOKAMANYA'S LIFE

A CHARACTER SKETCH

MR. TILAK belongs to a race that has already made a mark in the Maratha history. He is a *Chitpavan* Brahmin, and was born at Ratnagiri on 23rd July 1856. His father, Mr. Gangadhar Ramchandra Tilak, was at first an Assistant Teacher at Ratnagiri and then Assistant Deputy Educational Inspector at Thana and Poona. Gangadharpant was a very popular teacher of his time, and had published works on Trignometry and Grammar. He did not, however, live long to superintend the education of his son. By the death of his father in August 1872, young Bal was left an orphan at the age of 16. He was, however, able to continue his studies without interruption and passed the Matriculation four months after his father's death. He joined the Deccan College, passed the B. A. with honours in 1876, and took the degree of LL. B. of the Bombay University in 1879.

While studying law he made the friendship of the late Mr. Agarkar, afterwards the Principal of the Fergusson College, and the two youths passed many a sleepless

night in deliberating upon the best scheme they could construct for benefiting their countrymen. They eventually formed a resolution never to accept Government service, but to start a private High School and College for the purpose of imparting cheap and healthy education to the younger generation. They were, of course, laughed at by their fellow-graduates for their Utopian ideas, but neither ridicule nor external difficulties could damp the ardour of the youthful enthusiasts. About this juncture, an older man of congenial spirits came on the scene. The late Mr. Vishnu Krishna Chiplunkar, popularly known as Vishnu Shastri, had just resigned Government service because he could not pull on with his superiors, and had come to Poona with a firm determination to start a private High School. The son of an illustrious father, he was also already famous as the best Marathi prose writer of the time. Messrs. Tilak and Agarkar, having heard of Mr. Chiplunkar's plan, conferred with him, and the trio were soon joined by another man possessing remarkable energy and intelligence, the late Mr. M. B. Namjoshi. Messrs. Chiplunkar and Tilak, with the aid of Mr. Namjoshi, started the Poona English School on 2nd January 1880. Mr. V. S. Apte, M. A., joined them in June and Mr. Agarkar at the end of the year after passing his M. A. The five men did not confine their activity to the School alone. Simultaneously with the School, two newspapers, the *Mahratta* and the *Kesari*, were started, and they at once made their mark in the field of Native journalism. Mr. Vishnu Shastri Chiplunkar also established two printing presses, the *Arya Bhushan* for the use of the two newspapers, and the *Chitrashala* for the purpose of encouraging fine arts. With these various undertakings the five men had enough to do for some time, and they pushed

these on manfully. The New English School soon attained the first rank among the Poona schools; the *Kesari* and the *Mahratta* became the leading papers in the Deccan.

This band of patriotic workers, however, had soon to pass through an ordeal. The *Kesari* and *Mahratta* published some articles severely criticising the treatment given to H. H. Shivajirao, the late Maharaja of Kolhapur, and then the Karbhari of the State, Mr. M. W. Brave, consequently prosecuted Mr. Tilak and Mr. Agarkar as editors of the *Mahratta* and the *Kesari* respectively for defamation. To add to the troubles, while the case was pending, Mr. V. K. Chiplunkar died, and soon after his death Messrs. Tilak and Agarkar were convicted and sentenced to simple imprisonment for four months. The Kolhapur trial only served to increase the popularity of the School and the two papers. Willing assistance came from all sides. After Mr. Chiplunkar's death, Mr. Tilak was, for a long time, the guiding spirit and Mr. Namjoshi the active member of this small band. In the latter part of 1884, they resolved to give themselves a statutory existence, and with that view they formed the Deccan Education Society of Poona, with themselves as its first body of life-members. They were soon joined by the late Professor V. B. Kelkar, Professor Dharap, and Professor M. S. Gole, while later on came Prof. Gokhale, Prof. Bhanu, and also Prof. Patankar. In 1885 the Fergusson College was established under the auspices of the Deccan Education Society, and all the life-members agreed to serve in it as Professors for 20 years. The Society's institutions soon became prosperous. They purchased the Gadre Wada and the Knabutarkhana play-ground. The Nana Wada was later on handed over to them by Lord Reay in accord-

ance with a promise of Sir James Fergusson's Government and they erected a splendid structure near the Chaturshingi for the accommodation of the College. Mr. Tilak's connection with the School and College, however, ceased in 1890. The causes that brought about this disruption were many and various, and this is not the place to go into them. The process of disintegration had, in fact, begun long before. The Chitrashala had become an independent concern even in the life-time of Vishnu Shastri. About the year 1888 differences of opinion on social and religious questions between Mr. Tilak and Mr. Agarkar led to the latter's resigning his editorship of the *Kesari* and starting a paper of his own, the *Sudharak*. It was then found that the interests of the School and the College could not be identical with those of the papers, and so a partition was effected by which the *Arya-Bhushan* Press and the two papers became the private property of Mr. Tilak, Professor Kelkar, and one Mr. H. N. Gokhale, Professor Kelkar being the editor in charge of the two papers. This state of things lasted till the end of 1890, and might have continued indefinitely if fresh differences had not tended to increase the rupture. The differences chiefly related to the principles which should regulate the conduct of the life-members and the management of the School, and were brought to a head by Professor Gokhale's appointment to the Poona Sarvajanik Sabha in 1889. Mr. Tilak was from the first strongly in favour of a Jesuitical mode of life, and insisted upon an absolute rule that life-members should devote all their time and energy to their proper function as teachers. The majority of his colleagues did not agree with him, and consequently he severed his connection with the Society by sending in his resignation in November 1890. As a Professor, Mr. Tilak was very

popular. He was permanent Professor of Mathematics, but he also acted at intervals as Professor of Sanskrit and Science. Originality and thoroughness was his motto; and whatever was the subject he took in hand, his pupils had never any cause for complaint. As a mathematician he was unrivalled, and often reminded his pupils of the late Professor Chhatre of the Deccan College, Mr. Tilak's own Guru. His resignation was a heavy loss to the College in more ways than one.

After freeing himself from the drudgery of school, Mr. Tilak resolved to devote most of his time to a life of public usefulness. Having obtained more leisure just at the time when the Age of Consent Bill was brought before the Viceroy's Council, Mr. Tilak rushed into the controversy with his wonted ardour. Not that he was ever opposed to the principle of social reform, but he disliked reform by coercion. The Age of Consent Bill, however laudable its aims and objects might have been, was virtually an attempt to force reform on Hindu society by Government interference; and even many sincere advocates of social reform were consequently opposed to it. Mr. Tilak's attitude in this matter at once brought about a division of Poona society into two camps, the Orthodox and the Reformers, and the rupture between the two widened as new differences led to fresh quarrels. After resigning his place in the College, Mr. Tilak started a Law Class, the first of its kind in this Presidency, for the purpose of preparing students for the High Court and District Pleadership examinations. He also took over charge of the *Kesari*, while Professor Kelkar remained editor of the *Mahratta* till about the end of the year. Professor Kelkar, however, had soon to discontinue his connection with the papers altogether and Mr. Tilak became the editor of both. A year later

there was a partition between them of the press and the papers, and Mr. Tilak became the sole proprietor and editor of the *Kesari* and the *Mahratta,* while Professor Kelkar and Mr. Gokhale remained owners of the *Arya Bhushan* Press. Such were the vicissitudes through which the two papers had to pass since their birth. The *Kesari* especially has steadily risen in popularity since Mr. Tilak took it in hand, and its circulation now far exceeds that of any other English or Vernacular paper in this country.

Mr. Tilak was not a man to waste the whole of his time in ephemeral writing. He now resolved to turn his leisure to some account and devoted himself to his favourite books, the "Bhagavad Gita" and the "Rig Veda." As a result of his researches in the chronology of the Vedas, he wrote a paper on the antiquity of the Vedas as proved by astronomical observations. He sent a resume of this paper to the International Congress of Orientalists, which was held in London in 1892, and published the whole paper next year in book form under the title 'The Orion; or the Researches into the Antiquity of the Vedas.' Mr. Tilak in this book traces the Greek tradition of Orion and also the name of that constellation to Sanskrit Agrayana or Agrahayana; and as this latter word means the beginning of the year, Mr. Tilak concludes that all the hymns of the Rig Veda containing references to that word or the various traditions clustering round it must have been composed before the Greeks separated from the Hindus and at a time when the year began with the Sun in the constellation of Orion or Mrigashirsha, *i. e.,* before 4,000 B. C. It is impossible to do justice to his wide research and masterly argument in a sketch like this, but everybody who has a curiosity on the subject ought to go through the book

himself. The book was highly praised by European and American scholars, and Mr. Tilak's conclusions may now be said to have met with universal acceptance. Many Orientalists, such as Max Muller, Weber, Jacobi, and Whitney, have acknowledged the learning and the originality of the author. After the book was published, Mr. Tilak carried on for some time a friendly correspondence with Prof. Max Muller and Weber on some of the philological questions discussed by him, and the result was that both parties agreed that there was much to be said on each side. Professor Whitney of America, only a short time before his death in 1894, wrote an able article in the Journal of the American Oriental Society in which he highly eulogised Mr. Tilak's theories. Similarly Dr. Bloomfield, of John Hopkins University, in an anniversary address, spoke about Mr. Tilak's book in these terms:

"But a literary event of even greater importance has happened within the last two or three months—an event which is certain to stir the world of science and culture far more than the beatific reminiscences. Some ten weeks ago I received from India a small duodecimo volume, in the clumsy get-up and faulty typography of the native Anglo-Indian press. It came with the regards of the author, a person totally unknown to fame. I had never heard his name, Bal Gangadhar Tilak, B.A., LL. B., Law Lecturer, and Pleader, Poona. The title is 'Orion or Researches into the Antiquity of Vedas.' It will be understood that the entry of the little volume upon my horizon was not such as to prejudice me in its favour, and secondly, I placed it where it might be reached without too much effort in the drowsy after-dinner hour, to be disposed of along with much second class matter, such as reaches a scholar through the channels of the

Postal Union. Nor was the preface at all encouraging. The author blandly informs us that the age of the *Rig Veda* cannot be less than 4,000 years before Christ and that the express records of the yearly Hindu antiquity point back to 6,000 before Christ. Having in mind the boundless fancy of the Hindu through the ages and his particularly fatal facility for 'taking his mouthful' when it comes to a question of numbers, I proposed to myself to continue to turn the leaves of the book with the amused smile of orthodoxy befitting the occasion. But soon the amused smile gave way to an uneasy sense that something unusual had happened. I was first impressed with something leonine in the way in which the author controlled the Vedic literature and the occidental works on the same; my superficial reading was soon replaced by absorbed study and, finally, having been prepared to scoff mildly, I confess that the author had convinced me in all the essential points. The book is unquestionably the literary sensation of the year just before us; history, the chronic readjuster, shall have her hands uncommonly full to assimilate the results of Tilak's discovery and arrange her paraphernalia in the new perspective."

It would have been well if Mr. Tilak had immediately followed the same line and tackled the many questions which he had left unsolved in this book on Orion; but the profession he had chosen, namely, that of a Law-lecturer and Journalist, would not allow him the time to concentrate his attention on questions of philology and chronology.

In 1894 Mr. Tilak had to busy himself with an important case, partly in the interest of a personal friend and partly in the larger interests of the Baroda State. This was the well-known Bapat Case in which a Special Commission was appointed to try Rao Sahib W. S.

Bapat, the *de fucto* head of the Settlement Department, for a number of charges of corruption. The case arose out of a conspiracy against the Department, which was practically headed by the British Political department; and Mr. Bapat's trial had certain special features of interest inasmuch as it was timed to be held behind the back of the Maharaja who was then on a tour in Europe, and the revelations in the trial were expected by the enemies of theMaharaja to cast a damaging slur on at least one aspect of his administration. It was not the unpopularity of the Settlement Department alone but the unpopularity of many high personages, whom we need not here mention, which brought matters to a head. Mr. Bapat, it was evident, was going to be made a scapegoat and to be punished not only for his own sins, but vicariously for the sins of others also. The prosecution was conducted by the Hon. P. M. Mehta and afterwards by Mr. Branson, Bar-at-Law, and the defence was conducted by the late Mr. M. C. Apte and Mr. D. A. Khare. But Mr. Tilak had the lion's share of the work of the defence, and the splendid results of the searching cross-examination of witnesses for the prosecution, and the masterly argument for the defence, stand out as a monument to his industry and ability.

Mr. Tilak's activity in contemporary politics was not, however, left in abeyance. He had now ceased to be the Secretary of the Deccan Standing Committee of the National Congress; but as the Secretary of the Bombay Provincial Conference he organized its first five sessions, the fifth of which, held at Poona in 1892, under the presidency of the Hon. Mr. P. M. Mehta, was a splendid success. The next year, with its deplorable riots between Hindus and Mahomedans, and the many new questions suggested by them, brought about a great

change in the political atmosphere, and Mr. Tilak was again to the front. Never before did he place himself in such direct antagonism with the apparent policy of some Anglo-Indian officials and never before did those officials realize so well his influence over the masses. Mr. Tilak's attitude with respect to this riot question, whether right or wrong, was clear and unmistakable. He attributed those manifestations of racial prejudice mainly to the secret instigation of some short-sighted Anglo-Indian officers. The policy of 'Divide and Rule,' initiated by Lord Dufferin, was, according to him, at the bottom of all the mischief; and the only effective way, he contended, to check these riots was for Government officials to observe strict neutrality between Hindus and Mahomedans. He made, in fact, a direct charge against a certain class of officials and they naturally resented it. Both Lord Harris, the Governor, and his Secretary, Mr. Lee-Warner, were anything but favourably disposed towards him; but Mr. Tilak was not a man to be cowed down by official frowns. Through his paper, the *Kesari*, he exercised an immense influence over the masses, and it is this influence that is mainly responsible for the infusion of a new spirit among the people. His influence with the educated class was also great. He was twice elected a member of the local Legislative Council and also a Fellow of the Bombay University. In 1895 he headed the poll at the general elections to the City Municipality of Poona and won the esteem of his colleagues as a sound practical worker.

The new spirit had hitherto manifested itself chiefly in a return towards the veneration of indigenous institutions. The most noticeable instance of this was the revival of old religious worship in the form of the Ganpati and the Shivaji festivals, and Mr. Tilak's name has

come to be indissolubly connected with both these movements. Mr. Tilak firmly believed that a healthy veneration of the old gods and the national heroes would best infuse a true spirit of nationality and patriotism. The run for spurious imitations of foreign ideas and customs and the consequent spirit of irreligiousness among the younger generations were, in his opinion, exerting a disastrous influence upon the moral character of the Indian youth; and if things were allowed to drift in this way, the ultimate result, Mr. Tilak believed, would be a moral bankruptcy from which no nation can ever hope to rise. It was a very grave problem, and even the Government of India had turned their attention to it at that time. The official panacea, however, was the teaching of moral text-books in Indian schools, which Mr. Tilak in several articles in the *Mahratta* severely criticised. Mr. Tilak thought that to make Indian youths more self-reliant and more energetic, they must be taught greater self-respect, and that could only be done by making them respect their religion and their forefathers. Excessive and aimless self-debasement may perhaps be a good thing in an ascetic or a philosopher, but it does mischief in practical life. Superfluous patriotism may sometimes lead to excesses, but it will also do some good, while self-denying abjectness will only lead to lethargy and death. This is, in brief, Mr. Tilak's social and political philosophy; and however opinions may vary as to its correctness, nobody can deny that he has followed it consistently. Mr. Tilak has often been accused of hypocricy and inconsistency in matters of social reform. He is a practical reformer in his own way. He has educated his daughters, postponed their marriages till the utmost limit sanctioned by the Shastras, advocated relaxation of caste restrictions, and

generally sympathized with the social reform movement; and yet he attacked the social reform party. Superficial observers are staggered at this strange incongruity of behaviour, while his opponents attribute it to a desire to gain cheap popularity. The fact is, his conduct in this matter was entirely the result of his strong convictions. He desired social reform, but did not believe in the men or the methods that were then employed in carrying it out. The so-called social reformers of the past generation were not, in his opinion, the men who possess the aptitude or the moral qualities requisite for a successful reform movement. Hence his criticisms are generally directed to the men and not to the object aimed at. This is the real key to Mr. Tilak's attitude as regards social reform. His principle of criticism is in fact the same with respect to political as well as social questions. He may approve of a Government measure and yet criticise the conduct of officials who carry it out; similarly he may desire a particular reform and yet strongly condemn those who want to pose as its ministers.

In 1895 Mr. Tilak came to be associated with the Shivaji Commemoration movement. A stray article of his in the *Kesari* of 23rd April 1895 gave such an impetus to the public desire to subscribe for the repair of Shivaji's tomb at Raighur fort in the Kolaba district that Rs. 20,000 were in a short time collected, mostly from small contributions. Festivals also began to be celebrated at many places since that time on Shivaji's birthday or coronation day. When it was resolved to hold the eleventh National Congress in Poona, in the Christmas of 1895, Mr. Tilak was, by the united voice of all parties in Poona, chosen its Secretary, and had as such to do almost the whole work of organization in the beginning.

He worked till September, when differences as to whether the Social Conference was to be held in the Congress pandal led to bitter party quarrels and compelled Mr. Tilak to retire from the work. He did not, however, cease to take interest in the Congress, but on the contrary did much from outside to make it the great success it was.

The year 1896 saw one of the severest types of famine in this Presidency, and Mr. Tilak was again to the front. He argued upon the Bombay Government to carry out the provisions of the Famine Code and made various suggestions which, if adopted, would have considerably alleviated the sufferings of the people. In Poona he succeeded in preventing famine riots by opening cheap grain shops just in time. When he heard of the distress of the weavers in Sholapur and Nagar, he went on the spot, and, in consultation with the local leaders, framed a scheme by which local committees were to co-operate with Government to provide suitable relief to that class. The scheme was similar to the one adopted by the Lieutenant Governor of the North-West-Provinces. Unfortunately, owing to the unsympathetic attitude of the Bombay Government on this question, the scheme was not accepted; and what is more, the Bombay Government got the provision sanctioning such schemes amended. The wrath of Government was apparently caused by the persistent agitation of the Poona Sarvajanik Sabha, of which Mr. Tilak was supposed to be the leading spirit, to acquaint the people with the concessions allowed to them by law during famine times, and to inform the Government of the real wants of the people. The agitation was of course not much to the taste of officials. The Sabha sent several memorials to Government but received curt or no replies, and ultimately it

came to be proscribed altogether. All this of course was indirectly meant for Mr. Tilak, who fearlessly pursued his own way.

Mr. Tilak's next service to his countrymen was the part he played in the campaign against plague. As soon as plague appeared in Poona, he started the Hindu plague hospital and worked for days together to collect the necessary funds. While most of the so-called leaders in Poona had run away, he remained at his post, moved among the people, accompanied the search parties as a volunteer, managed the hospital, established a free kitchen in the segregation camp, and was often in communication with Mr. Rand and His Excellency the Governor on the subject of hardships suffered by the populace. In his papers he strongly supported the various measures adopted by Government for the suppression of the plague, but advised their being carried out in a humane and conciliatory spirit. He advised the people not to make useless resistance, and took the Poona leaders to task for flying away at a time of distress.

But his public services did not save him from prosecution and persecution by Government. The story of his first prosecution for sedition in 1897 may be briefly told as follows:

In 1895 a movement was set afoot for repairing the tomb of Shivaji at Raighur, which at last in 1896 took the shape of a festival in honour of Shivaji on his birthday. In 1897, owing to the plague, the festival was not held on the birthday of Shivaji but on his coronation day, which happenned to fall on the 13th June. On that day, and on the previous and subsequent days, a long programme of prayers, hymn-singing, sermon-preaching or *Puran* and lecturing was gone through. A very con-

densed report of the proceedings, with a hymn sung on the occasion, was published in the issue of the *Kesari* of the 15th of June.

On the 22nd of June, Mr. Rand and Lieutenant Ayerst were murdered by some unknown person, which created intense excitement, especially in the Anglo-Indian community of Poona and Bombay. The Bombay Government gave sanction to prosecute Mr. Tilak on Friday the 26th July, and Mr. Baig, the Oriental Translator, laid information before Mr. J. Sanders Slater, the Chief Presidency Magistrate of Bombay, on the 27th July. Mr. Tilak was arrested the same night in Bombay and placed before the Magistrate the next day. An application was made to the Magistrate for bail soon after, which was strenuously and successfully opposed by Government. On the 29th a similar application was made to the High Court, which was disallowed, with permission to apply again. The case was committed to the High Court Sessions on the 2nd of August and an application for bail was again made to Mr. Justice Budrudin Tayabji, the presiding Judge, in Chambers by Mr. Davar of the Bombay Bar, instructed by Messrs. Bhaishankar and Kanga. The application was, of course, very strenuously opposed by the Advocate-General. The Judge, however, admitted Mr. Tilak to bail.

The case came on for hearing in due course on the eighth of September and lasted for a week. Mr. Pugh, of the Calcutta Bar, assisted by Mr. Garth, defended Mr. Tilak, and the Hon'ble Mr. Basil Lang, the Advocate-General, conducted the prosecution. Mr. Justice Strachey presided at the trial; and the Jury consisted of five European Christians, one European Jew, two Hindus, and one Parsee. The six Europeans returned a verdict of guilty, and the three Native jurors of not guilty.

The Judge accepted the verdict of the majority and sentenced Mr. Tilak to eighteen months' rigorous imprisonment. When the Jury had retired to consider their verdict, an application was made to the Judge on behalf of the accused to reserve certain points of law to the Full-Bench, which was refused. A similar application to the Advocate-General, subsequently made, met the same fate. On the 17th of September 1897 an application was made to the High Court for a certificate that the case was a fit one for appeal to the Privy Council. This application was heard by Sir Charles Farran, C.J., and Candy and Strachey, JJ., and leave was refused.

An appeal, however, was made to the Privy Council, and the Right Honourable Mr. Asquith argued the appeal on behalf of Mr. Tilak on the 19th of November 1879. Lord Halsbury, the Lord Chancellor, who was then a member of the Cabinet went out of his way to preside over the Council, though it was well-known that the State Secretary for India, another member of the Cabinet, had sanctioned the prosecution. Mr. Asquith laid great stress on the misdirection of the Jury by Mr. Justice Strachey; but the Privy Council, taking the whole summing-up together, saw no occasion for correcting anything therein; and consequently they rejected the application for leave to appeal.

The judicial avenues to Mr. Tilak were thus closed. But the events had made a deep impression on the British public, and Professor Max Muller and Sir William Hunter, with the large-heartedness which usually characterised them, took the lead in presenting an influentially signed petition to the Queen, praying for mercy to Mr. Tilak on the ground that he was a great scholar and that there was much to be said in favour of his release. This petition, among other things,

had its effect, and after negotiations Mr. Tilak was persuaded to accept certain formal conditions and he was released by order of His Excellency the Governor of Bombay on Tuesday 6th of September 1898.

Mr. Tilak having lost enormously in physique by his imprisonment, he spent the next six months in recouping his health. First he spent some days at the Singhgad sanitarium and after attending the Indian National Congress at Madras in December he made a tour to Ceylon. The next year or two he spent in taking up the threads of the movements which he had already in hand, but the work in connection with which was suspended owing to his imprisonment. A grand Shivaji festival was celebrated on the Raighur Hill Fort in the year 1900: and the cause of perpetuating the memory of Shivaji by a monument was pushed on appreciably further thereby. But more important than any other was the work that he undertook of developing his idea about the antiquity of the Vedas which was, as it were, haunting him persistently ever since he published his book on the 'Orion'. Much of his spare time during the preceding ten years, he says in his introduction to the new book 'The Arctic Home in the Vedas', had been devoted to the search of evidence which would lift up the curtain through which a deeper peep could be taken into the misty antiquity of the Vedas. He then worked on the lines followed up in the 'Orion', and by a study of the latest researches in Geology and Archaeology, bearing on the primitive history of man, he was gradually led to a different line of search and then finally the conclusion was forced on him that the ancestors of the Vedic Rishis lived in an Arctic home in inter-glacial times. The enforced leisure

in the Jail he turned to account in developing his theory with the assistance of the complete edition of the Rig Veda, which Prof. Max Muller had sent him and the use of which was allowed to him in the Jail. The first manuscript of the new book was written at Singhgad at the end of 1898, but Mr. Tilak deliberately delayed the publication of the book as he wanted to consult Sanskrit scholars in India and as the lines of investigation had ramified into many allied sciences. The book was actually published in March 1903 and it was very favourably received everywhere. We will quote only one important testimony, that by Doctor F. W. Warren, the President of the Boston University and the author of 'Paradise Found', which was published in the *Open Court Magazine*, Chicago, for September 1905:

"Within the limits of this article no summary of the author's argument can be given. Suffice it here to say that in the judgment of the present writer the array of the evidences set forth is far more conclusive than any ever attempted by an Indo-Iranian Scholar in the interest of any earlier hypothesis. Absolute candor and respect for the strictest methods of historical and scientific investigation characterize the discussion throughout. This results in part no doubt from the fact that the author's own attitude of mind was at the outset highly sceptical. He says: 'I did not start with any preconceived notion in favour of the Arctic theory; nay, I regarded it as highly improbable at first; but the accumulating evidence in its support eventually forced me to accept it.' It is hard to see how any other candid mind can master the proof produced without being mastered by it in turn. Twenty years ago, in preparing my work on the broader problem of the cradle-land of the whole human race, I went through all the Vedic and

Avestic texts so far as existing translations would then permit, reaching at the end the same conclusion that Mr. Tilak has now reached. Incidentally, in my argument a new light was thrown upon various points in the mythical geography and cosmography of the ancient Iranians,—light which the foremost Iranist of his time, Professor Spiegel, generously acknowledged. Incidentally, I also arrived at a new interpretation of the Vedic myth of the captive waters, and of other Vedic myths. Especially gratifying, therefore, is it to me to find in Mr. Tilak a man in no degree dependent on translations, yet arriving not only at my main conclusion, but also at a number of minor ones of which I had never made public mention. I desire publicly to thank this far-off fellow-worker for the generosity of his frequent references to my pioneer work in the common field, and for the solidity and charm of his own, in certain respects, more authoritative, contribution. Whoever will master this new work, and that of the late Mr. John O' Neill on *The Night of the Gods,* will not be likely ever again to ask, where was the earliest home of the Aryans? "

But by the time Mr. Tilak's new book was issued to the public, he was already in the vortex of another prosecution at the instance of the Bombay Government. This was the well-known Tai Maharaj Case which has taken up a big slice out of Mr. Tilak's time since 1901 and which, besides subjecting him to far more excruciating physical trouble and mental torture than any State Prosecution for sedition is capable of, actually involved him in a loss of several thousands of rupees.

The story of this case briefly is as follows:

Mr. Tilak was the principal among the four trustees and executors of the estate of the late Shri Baba Maharaja, a first class Sardar of Poona and a particular friend

of Mr. Tilak. Baba Maharaj died on 7th of August 1897 a couple of days after Mr. Tilak was released on bail by the High Court in the State Prosecution for Sedition against him in 1897. Misfortunes never come singly; and, by a curious coincidence, on the very day on which Mr. Tilak returned from Bombay after his release, he was called to the death-bed of his friend who insisted upon Mr. Tilak accepting the office of an executor under his last will and testament; and Mr. Tilak agreed to take the heavy responsibility in the hope that by doing so he might be the means of regenerating the Maharaj family, one of the old aristocratic families of the Deccan —by freeing it from debts and handing an unencumbered estate to an heir who might be educated and brought up under his personal supervision. Till sometime after Mr. Tilak's release from jail, he could not apply his mind to the administration of the estate. But as soon as he could take up the work he found two matters urgently waiting for disposal. One was the liquidation of debts and the curtailment of expenditure as the only and necessary means to that end, and the other was the giving of a boy in adoption to Tai Maharaj, as owing to plague, then raging in Poona, human life had become uncertain in the city, and Tai Maharaj was of course the only person who could adopt a son to her husband. Both these matters unhappily contained the germ of the future dispute. The liquidation of debts meant the curtailment of expenditure, and this could not be very agreeable to Tai Maharaj. And the young widow, well aware of the beneficent intentions of Mr. Tilak, at first cheerfully accepted her position as the titular representative of the estate, the real and effective ownership being vested in the trustees appointed by her husband's testament. But

the lady was soon got over by her favourite Karbhari and was taught to fancy herself to be the equitable owner of the estate and to regard her possible divestment by an adopted boy as a legitimate grievance. There were also harpies who fed on her, had made themselves more or less dear to her as the objects of idle amusement in her widowed leisure, and who gradually and slyly nestled into her confidence as counsellors that whispered agreeable words and made pleasant suggestions. They magnified to her eyes the sad points in her future plight as a mere pensioner and a dependant upon the estate when, if she had but the will, she had also a way to remain independent for ever or at any rate make terms with the boy who would like to sit in her lap and take the estate even as conditioned by her with a far-sighted eye to the welfare of herself and her most favourite and actively co-operating counsellor. But even such a limited and conditioned estate may be a fortune to many boys who were comparatively poor as they were, and would gladly seek adoption or be persuaded thereto by their brothers, for instance, who, in the event of such an adoption, might find their own means appreciably augmented by at least one lawful sharer being cleared out of the way to the ancestral estate. And all this did happen in the case of this unfortunate lady. The cutting down of the budget caused her alarm, and the machinations of the unscrupulous party, led by one Nagpurkar and Pandit Maharaj of Kolhapur, who entered into a conspiracy to get Tai Maharaj to adopt Bala Maharaj, Pandit's brother, were encouraged by her fitful moods. But neither the lady nor Nagpurkar had courage enough to openly oppose the trustees, the former having all along a deep-rooted conviction that the trustees would do nothing that should either benefit themselves person-

ally or compromise the posthumous welfare of her late husband. And at any rate there was admittedly no disagreement between them and her up to the 18th of June, 1901, the day when they all finally started for Aurangabad where eventually a boy was given in adoptiong to her from the Babre branch of the Maharaj family.

But on her return from Aurangabad she again fell into the hands of evil counsellors and Tai Maharaj was induced by her evil advisers to get the probate of her husband's will cancelled in the belief that she would be then quite free and her own mistress. The application was made to Mr. Aston, District Judge, Poona, on 29th July 1901.

The proceedings in this application lasted from that date to the 3rd of April 1902. Altogether about thirty-four sittings were held, out of which so many as 14 were taken up by the cross-examination of Mr. Tilak under the united battery of Mr. Aston and Tai Maharaja's Pleaders. The principal noticeable point in these proceedings is that the Aurangabad adoption, though not raised to the status of a distinct issue, was forced in by Mr. Aston as almost the principal question to be decided; and a whole flood of documentary and oral evidence bearing on it from the side of Tai Maharaj was let in, in spite of Mr. Tilak's challenge and protest to the contrary, through the wide floodgates of Mr. Aston's ideas of the Law of Evidence on the point of relevancy. The specific issues raised were only whether the grant of probate to Mr. Tilak and others had become useless and inoperative and whether the executors had become unfit to act in the Trust so as to make the appointment of new trustees necessary. On these issues Mr. Aston decided in the affirmative, held the Aurangabad adop-

tion disproved, revoked the Probate and ordered the costs, *as in a suit*, to be borne by Mr. Tilak and Mr. Khaparde personally. The judgment is a lengthy document of about 40 printed foolscap pages, but 90 per cent of it is devoted to findings and criticism upon facts relating to wholly irrelevant matters such as the alleged confinement of Tai Maharaj at Aurangabad, the Aurangabad adoption, the alleged ill-treatment of Tai Maharaj at Poona—matters which, it must be remembered, Mr. Tilak had protested against as irrelevant, and relating to which he did not put in a single scrap of evidence except by his own answers given under compulsion, and upon which he instructed his pleader to let him severely alone in examination by him. Obviously, therefore, there was only a one-sided account of all these matters before Mr. Aston, and yet he did not scruple to draw conclusions and make criticisms as if he had all the possible evidence from Mr. Tilak's side before him. The whole was a regular Inquisition, Mr. Aston himself acting the part of a 'Devil's Advocate' against Mr. Tilak.

As the result of the Inquistion over which he presided, Mr. Aston found that Mr. Tilak had not only deserved discredit by revocation of Probate, but had committed a number of offences in the transactions brought to his notice, and he crowned the improper, illegal and harassing proceedings in his Court as a Civil Judge by taking action under 476 of the Cri. Pro. Code, and committing Mr. Tilak to the City Magistrate to be dealt with according to law. The criminal charges formulated against him were seven and as follows:

(1) Making false complaint for breach of trust against Nagpurkar. (In this connection Mr. Aston even went out of his way to induce Nagpurkar to put in an application

for sanction under sec. 195 Cr. P. C.) (2) Fabricating false evidence for use by making alteration and interpolation in the accounts of the Aurangabad trip. (3) Forgery in connection with the above. (4) Corruptly using or attempting to use as genuine evidence—evidence known to be false or fabricated in connection with the attesting endorsement of Tai Maharaj on the adoption deed. (5) Corruptly using as true or genuine evidence the said adoption deed. (6) Fraudulently using as genuine the adoption deed containing his interpolation over Tai Maharaj's signature. (7) Intentionally giving false evidence by ten sentences which were grouped under three sub-heads relating to (*a*) the fact of adoption at Aurangabad, (*b*) Tai Maharaj's confinement in the Wada to Poona, and (*c*) use of force to Bala Maharaj in the same Wada.

This in itself is a formidable list. But to make the thing complete we may as well state here that not content with a commitment on these charges, Mr. Aston had suggested to Government an investigation in certain other collateral charges arising out of the same transaction such as giving false information to the Police, cheating, unlawful assembly, riot, etc., etc.

Repeated appeals were made to the High Court which, if it had given one stitch in time, would have saved nine which it had to give afterwards. But while upsetting Mr. Aston's order for the revocation of Probate as wrong, the High Court allowed in a light-hearted fashion the criminal proceedings against Mr. Tilak to go on. As regards the charge of false complaint, Mr. Beaman refused to uphold the sanction for prosecution against Mr. Tilak which fell through. But after a prolonged trial Mr. Clements, Special Magistrate, convicted Mr. Tilak on the charge of perjury and sentenced him to

rigorous imprisonment for eighteen months, admitting that Mr. Tilak was not actuated by selfish motives but condemning him as a man who was demented and whose mind was unhinged by obstinacy and love of power.

The fair weather region, however, began with the decision of Mr. Lucas, the Sessions Judge, who, in appeal, reduced the sentence to six months after completely vindicating Mr. Tilak's motives and intentions. Mr. Lucas's judgment for conviction was top-heavy and insupportable and Mr. Tilak came out triumphant and with flying colours in the High Court on the 4th of March 1904. The charge of perjury was knocked down on the head and Government out of very shame withdrew all the other charges; and so Mr. Tilak emerged from the fiery ordeal without a stain on his character.

The judgment of Sir Lawrence Jenkins was for all practical purposes a judgment on the adoption suit itself. For the party of Tai Maharaj, having fallen to the temptation of using Mr. Aston to the fullest extent possible, had sown the wind by getting Mr. Tilak to be committed on a charge of prejury relating to the factum itself of adoption; and they must thank themselves for having to reap the whirlwind in that the adoption itself was indirectly pronounced upon by the High Court. The crash of course came late, but it was complete when it did come; and the conspirators against Mr. Tilak realised that they had really dug the grave for themselves though meant by them for Mr. Tilak. It was of course extraordinary that the issue of an adoption should be decided like this in a criminal case, but it was made inevitable by Mr. Aston for the good of Tai Maharaj and for the ruin of Mr. Tilak. But Mr. Aston now found himself hoisted with his own petard! The case took

nearly all Mr. Tilak's time from May 1901 to March 1904. A calculation shows that these proceedings occupied about 160 sittings, Mr. Tilak having to appear in Court for most of these days in person. The aggravating feature of the prosecution was that in prosecuting Mr. Tilak the Bombay Government were indirectly seeking the fulfilment of their animus against him. They were fighting the battles of Tai Maharaj on the ground of adoption. It was an evil combination of official animus and a woman's self-interest; and we for one cannot decide what was the real fact, namely, whether Tai Maharaj was a tool in the hands of Government or Government were a tool in her hands! The probability is that each of them used and was actually used in turn as a tool by the other to a certain extent, though it is to be pitied that in all this the Government so far forgot their dignity as to debase and put themselves on the mean level of an illiterate, selfish and misguided young widow! All this took the public interest in the case far beyond the personality of Mr. Tilak, though he was no doubt the central figure therein.

How Mr. Tilak behaved during all these troubles; how he could not only keep the serenity of his mind so as to pursue his ordinary avocations without detriment; how even in his darkest hours when expressions of hope from others were only likely to have sounded as hollow mockeries or premature consolations, he not only maintained cheerfulness enough for himself and to spare for others and proved a source of intellectual inspiration to his own legal advisers; how he could command isolation of mind even amidst his deep-rooted and worrying anxieties, only intensified by the death of his eldest son, in order to pursue his favourite literary studies to issue his latest book "the Arctic Home in the Vedas" a few

days after his commitment by Mr. Aston—these are all matters on which perhaps it is not for us to dwell at any length.

Mr. Tilak has since won the civil case for adoption in the Court of Original Jurisdiction at Poona which has completely vindicated his word and his action.

The next year Mr. Tilak spent in organising his private affairs, specially relating to the papers and the press. The enormus circulation of the *Kesari* required the importation of a big machine for printing it, and the generosity of the Maharaja Gaikwar who sold to him the Gaikwar Wada at Poona for only a fair price, enabled him to give his papers and the press the much needed permanent local habitation. With his well-known versatility he also applied his mind to the casting of a new kind of Marathi type with a view to adapt it to a Marathi lino-type machine, and in this matter he has achieved remarkable success. Lino-type makers in England have approved of his design of the new type, but the actual importation of lino-type machines fitted with Marathi type has been delayed owing to the fact that there are very few printing houses in the country who could afford to use Devanagari lino-type machines and that consequently the lino-type makers in England cannot be persuaded to lock their capital in the casting of the new machines till that time.

Since the year 1905 Mr. Tilak has been deeply engrossed in active political agitation. The Bengal Partition led to a sudden upheaval of national sentiment throughout the country and to the inauguration of the movements of Swadeshi, Boycott, National Education and Swarajya. The Benares Congress was the beginning of an organised and strong expression of public opinion in the country; and the story of the Calcutta

and the Surat Congresses is too fresh in the minds of our readers to need reiteration. It has been acknowledged that Mr. Tilak was by far the ablest leader of the new party of Nationalists and that it was owing to him that the lamp of nationalistic feeling, according to the new lights, was kept burning in Western India since the partition.

Mr. Tilak's has been a most eventful life. He is a man of originality which is surpassed only by the glow of his fiery spirit and by his untiring activity. He scorns ignoble ease and is particularly happy when he is face to face with an undertaking in which the odds are manifestly against him. Then again most of his acts have a real altruistic aspect. His ambition has been to strive for the good of the people; and it is admitted that he has been able to realise his ambition in a pre-eminent degree. These two things go to make up the secret of his success as a man who, more than any other of the present or the past few generations, has touched the imagination of millions of his countrymen. The unprecedented popularity and esteem which Mr. Tilak enjoys and deserves needs no description. He combines abilitv, industry, enterprise and patriotism in such a degree that the British Government think they have always to be mindful of him. And many of Mr. Tilak's friends will, we suppose, be content to accept the attitude of the Mighty British Government towards him as perhaps the most eloquent testimony to his worth.*

* From a book published in 1890

THE STRACHEY JUDGMENT*

INDEED Mr. Lamb was a true prophet when he foretold the doom of Poona. Mr. Lamb was a prophet, and no wonder; because he was in the secret. His prophecy, why, it was more than a prophecy—his *promise*, that the beloved city of his birth would have to experience all the horrors that the surging wrath and mighty power of a masterful Government can create, is being gradually realised. We do not at all refer to the topic in a complaining mood. Nor is there anything, in the latter manifestations of that prophecy, that can call forth our surprise. We still adhere to what we said, in noticing the Poona troubles for the first time, that the Bombay Government has successfully established what might be called a reign of terror in Poona. Nothing to our mind, could approach, either in point of its unaccountableness, or its capacity to terrorise people, the one act of the "will-law" on the part of the Bombay Government by which the Natu brothers were arrested and deported without hearing and without trial. The press prosecutions, however, are not such absolute dangers threatening the life of loyal citizens, as these deportations. A state prosecution *is* indeed terrible, but it is not so ugly nor half so demoralising as the resuscitation of the old-world spectre of a Regulation. As a matter of principle we have no quarrel with that kind of persecution which is called a prosecution. Those that have the misfortune to incur the displeasure of their sovereign must consider themselves as still the pets of fortune, if they are given an open trial and a fair hearing. It is no small privilege,

*From the *Mahratta* dated 20th September 1897.

for even the proudest and the most honourable of the subjects of the British Government, to be able to keep the sovereign power at arm's length, so long as it has to seek and pray for such assistance as law and lawcourts can give. Indeed, people are in the habit of complaining that while our brother subjects in England are enjoying the benefits of a Parliamentary Government, we, out here, the loyal subjects of the same gracious sovereign, are handed over to the tender mercies of occidental Sultans. But they forget that in the *respect*, whether forced or free, to law and constitutionalism which the most autocratic of Governors must pay, lies the bulwark of our liberty and our independence. In the face of that forgetfulness to which Parliament has consigned us, should we not be rather thankful that the old statute books are not more often ransacked for specifics against constitutionalism? If the Natu brothers mourn their captivitv, they have still more to mourn the gag applied to their mouths. Mr. Tilak, we daresay, has at least the satisfaction to be conscious that his case is before the world. Neither Mr. Tilak nor his friends can complain, on principle, that he was prosecuted for writing something which the Government thought seditious, because the way in which Government has sought to vindicate itself is perfectly legitimate. Saying this much we feel justified in adding that it is, however, open to him or them to say that he did not get justice notwithstanding the legitimacy of the action taken against him. There are a good many reasons in support of this allegation. If, as Mr. Justice Strachey has repeatedly pointed out, Mr. Tilak should not have written or spoken certain words at the time he did because the people, who read or heard them, might have an agitated state of mind, precisely for the same reason the prosecution should not

have been instituted at the presant time, because, the community represented by the majority of the jury could not possibly be enjoying a calm temperament. The Jury attributing the Poona crimes to the writings in the *Kesari* could not certainly be called wiser in appreciating the law of causation than the people who laid the sins of famine and pestilence at the doors of the British Government. All the same, the illogicality is patent in both the cases, and if Mr. Tilak was wrong in discoursing on political morality to half educated people, the Bombay Government was not certainly right in handing him over to the mercy of a prejudiced, not to say infuriated, jury. A philosopher would not convict Mr. Tilak for sedition, as he could not also be instigated by his writings to take up arms against the British rule. But, as Mr. Justice Strachey advised the Jury to think of what effect might be made on the mind of an *average* reader or hearer, so also, *in the interest of justice* Government ought to have seen what verdict an *average* Anglo-Indian might return. If it be impossible to get perfectly unbiased jurors, we should at least take men at their *normal* moods. If Mr. Tilak was to be prosecuted at all the case should have been transferred to a High Court outside the Presidency, so that greater impartiality could have been secured. As the incriminating articles were in Marathi, and as the estimate of their effect was to be made from the impression they would produce upon an ordinary Marathi knowing man, it was but proper to have Marathi knowing men on the Jury. The claim need not seem preposterous, and Government should have granted to Mr. Tilak at least as a *favour*, what the meanest European British subject demands as a matter of *lawful right*, *viz.*, a majority representing his race, in the jury. The purpose could even have been well served, if experts in

the Marathi language were called. The judge at one time seemed inclined to do it; but Mr. Tilak's misfortune, if nothing else, prevented it. And so Mr. Tilak was tried and convicted by a judge and the majority of a jury who did not know Marathi, at least not so well as to properly appreciate the niceties and subtleties on which the collected sense of the offending passages so entirely depended. Mr. Tilak asserted that he did not get justice, and who would say that he did? The prosecution, we repeat, was legitimate; and excepting on a point or two, the trial did conform to the law of the land. And yet can Mr. Tilak be said to have got justice? It is Cicero, we think, who has defined justice, as "conformity to the written-law." In that sense perhaps justice may be said to have been done. But not even in that sense; for the letter of the written law is something different from the spirit of it, and the spirit of the law by which Mr. Tilak was judged was not properly interpreted by the judge and appreciated by the jury in the present case. "It is impossible to be just if one is not generous," observes a great thinker. And in the present case not only no generosity has been shown, but law has, as pointed out above, been forcibly divorced from equity, which tempers the rigour of law or levels its angularities, and thus forms the better part of justice. It is transparent that the Bombay Government has given Mr. Tilak the *most technical justice*—justice which stumbles on innocence and does harm. From the very choice of the place of trial onwards, a diligent attempt was apparent on the part of Government to give Mr. Tilak nothing more than such technical justice.

But it is no use complaining. Mr. Tilak may or may not have got his due; your arguments avail not, much less your tears. It is true that proceedings like these are

calculated to undermine respect for law as a hand-maid to justice. But we must take things as they are, and make the best of them. It seems very much like hypocrisy on the part of the Bombay Government to require the aid of law in smashing Mr. Tilak. Cowper says:

> Hypocrisy detest her as we may
> May claim this merit still, that she admits
> The worth of what she mimics with such care
> And thus gives virtue indirect applause.

In this very indirect "applause" to the virtue of constitutionalism, which Government gives, lies our comfort. And laying that unction to our heart, we must proceed to do our duty as subjects of the British Government aspiring after that kind of emancipation which our English brethren enjoy directly under the light of Her Majesty's gracious eye. What seem like contests between the rulers and the ruled are inevitable. Really speaking, in the heart of hearts Government does not believe that we are disloyal. Nay, more, Government perfectly understands the ideal that we have placed before our eyes in directing our agitations and activities; and it has, so far, as a matter of fact, helped us onward to it, by its own motion. But our rulers are human beings, and they naturally do not like to give us power. They *are* going to grant us privileges of free citizenship by and by. But they are rather slow to give, and give us what they give, only grudgingly. The interests of the ruled and the rulers, therefore, are in temporary but *immediate* antagonism. Worship at the shrines of Government and the people, at the same time, becomes incompatible; and those who are really working for the good of *both* the members of our political society, and who would like to be appreciated as such, are forced to declare themselves on one side only. Men, working after

a true ideal, have thus to find themselves between two divergent blades as of a pair of scissors and, alas, to be clipped, when that divergence comes to a *point*. In this state of things, the only safe man is he who sits with folded arms disregardful of his country's good. He lets himself to be drifted, like helpless chaff, by the current of circumstances and gets safety as a reward for his culpable indolence. The active man, with a will to work and a heart to feel for his country, is punished for what the country profits by, through his labour and self-sacrifice. Nothing could be more perverse. But that perversity disappears when we lose sight of the present and give our eye to the future. It does not require very extraordinary wisdom to see that the phenomena, like those we now witness, are only occasional and cannot at all be accepted as true signs of our destiny though they be more or less true signs of the times. Even when the tide is rising the waves are seen to retire, and the present repressive measures of the Bombay Government do not, in fact, they cannot, permanently shackle our progressive feet. Our cause is true and it must advance. As individual rulers, by their unsympathetic nature, may become odious to the people, so also, individual public workers may at times give offence to Government. Feelings of hate and revenge may have play for the time. But we should be only imprudent to base our hopes or our fears on the decision of such side issues. In fact, we cannot afford to make our vision so narrow. The emancipation of our country is an event not of one day or one year. (By the emancipation of our country we mean the same independence under British sovereignty, which the English subjects in Britain or the colonies at present enjoy. We have to be explicit, because in these times, one cannot afford to be even harmlessly ambiguous.) It

is perhaps difficult to realise, but none the less true, that the struggles of peace and constitutionalism last longer, and are even more severe than those of war and lawlessness. "The free broad battle-field of thought" extends far wider than we can see or imagine; and whole generations have, in the cause of our country, to tread them. Those, that feel sorry for Mr. Tilak, have they not a thought to give to his country for whose sake he suffers? It would be doing injustice both to Mr. Tilak and his country, if we concentrate our thoughts only on his undeserved sufferings. Does not Mr. Tilak serve his country even by his imprisonment? Will he not have shown to his countrymen, that the course of constitutional emancipation, like that of love, does not run smooth, and that that course is not to be abandoned simply because there are dark pit falls in it? If there is any moral in the conviction of Mr. Tilak, it is this. Law does often times go against justice and morality. In theory it may be even virtuous to go against law; but in practice we must yield to law, as it is, implicit obedience. In rendering this obedience, sometimes you may have to suffer; but if Government, which is all powerful, is shewing its respect for law by requiring its aid as indispensable, we must also shew *our* respect by meekly suffering its penalties as inevitable. All the while, however, we may remember, that if we are really conscious of our innocence and our honest endeavours to seek *public* good, *i.e.*, the good of the Government as well as the people, then we need not dread imprisonment and the rest of them. In the case of men with that consciousness, "stone walls", in a certain sense, "do not a prison make". The damp or the darkness of its vaults cannot quench or dim the spirit or the light of such minds. Imprisonment may be enforced by loss of freedom, but it may not be also loss

of reputation. Real public workers will never intentionally disrespect law, but sometimes laws themselves may be set or worked against them like traps or catchers. Their imprisonment, in such *accidents*, is a misfortune to be regretted, but they should on no account make us despondent. With a firm faith in our conscience and the sense of justice in our government, we must unceasingly work. Of course, as the quaker poet says,

> " Thy task may well seem overhard,
> Who scatterest in a thankless soil
> Thy life as seed, with no reward
> Save that which duly gives to soil. "

Yet, as the same poet further advises,

> " . . . do thy work. It shall succeed,
> In thine or in another' s day:
> And if denied the victor's meed,
> Thou shalt not lack the toiler's pay. "

MR. TILAK'S RELEASE *

AFTER fifty-one weeks of jail life, Mr. Tilak has gained back his liberty and we sincerely thank Government for the same. The event did not come upon the public quite as a surprise. In fact they were expecting it to happen since four months ago. There could not possibly have been any occasion more appropriate for it than the anniversary, this year, of the birthday of Her Most Gracious Majesty Queen Victoria. The expectations of the public about Mr. Tilak's release at that time ran very high, and the disappointment when it came was therefore extremely painful. Of course it must be said in fairness to Government that they had done little to raise those expectations, and they therefore could not be held responsible for the disappointment though cruelly severe. This much however could be said even by the most fair-minded of men, that Mr. Tilak's release on the Queen's birthday would have been most appropriate, and politic too inasmuch as it would have served to create altogether pleasant associations about that already much cherished holiday in the public mind. But somehow or other Government could not meet the wishes of the public at that time. That opportunity past, one naturally grew quite sceptic as to whether Government at all intended to release Mr. Tilak before his time. It was, however, plain that by every moment of his prolonged confinement, since the end of the Chafekar trial, Government were allowing a state of things to exist for which justification was fast disappearing. During all the meantime again the petition of Prof. Max Muller, Sir

* From the *Mahratta* dated 11th September 1898

William Hunter and other English philanthropists was awaiting a reply in the State Secretary's office, and the only reply to it could possibly be nothing else than an actual release. In such an uncertain but never hopeless state of mind, the public wearily watched a year to come to a close without restoring to them Mr. Tilak. But the end of a year, it now seems, must have been fixed as a limit by Government for the confinement of Mr. Tilak; for when that limit was almost reached, Government took the initiative altogether independently, and after some preliminary negotiations issued a resolution setting Mr. Tilak at liberty at 9 P.M. on Tuesday last. It is useless for the public to speculate as to the immediate and what may be called also the accelerating cause of Mr. Tilak's release. Whether it was some instructions from home by the last mail, or an urgent call for a reply to Professor Max Muller's petition, or the promptings of the Bombay Government themselves, the result is equally agreeable; and we hereby tender our most heartfelt thanks to Government for their act of generosity in releasing Mr. Tilak. It is true that even fifty-one weeks of incarceration were too much when we consider the position of the man and the offence he was held to have committed. But even as it is, Mr. Tilak has been saved practically at least four months of the life of misery and solitude, and that, we are disposed to regard, is not such a small mercy as we could disregard. We can also clearly see that Government meant to base their act upon the execution of a provision of the Criminal Procedure Code rather than upon a mere act of mercy; and we are glad that the event of liberation has been thus made more acceptable to Mr. Tilak as a man of honour. We congratulate Government upon the good sense and large-heartedness they have shown in this

particular instance. All this was to be expected when we remember that soon after Mr. Tilak's conviction Government began to shew signs of a state of mind which breathed generosity and good sense. They soon saw their mistakes and the truth must have dawned upon them, when the secret inquiry into the Chafekar case ended, without bringing out any the least trace of the complicity of any citizen of Poona in the lamentable crimes of the jubilee night. But though Government may have wished to wash their hands of the matter by soon releasing Mr. Tilak, still other considerations may have come in their way and the Bombay Government must have remained oscillating from side to side. It was also, on the other hand, useless to expect that Mr. Tilak could be prevailed upon to give up the firmness and sternness of the position in which he remained nourishing a faith in himself, his innocence and the sympathy of the public in his troubles. It was thus a struggle on both the sides. There could be no key to the solution of such an involved position, except the good offices of an intervening friend, and they were happily available in the present instance by the philanthropic petition of Prof. Max Muller, Sir William Hunter, Sir Richard Garth and other English gentlemen of eminence and respectability. It is difficult to adequately express the obligations which Mr. Tilak is under to these gentlemen for the sympathetic interest they took in his release; and Mr. Tilak has the satisfaction of seeing that it was ultimately by the triumph of English philanthropy and English sense of justice that he was released though undoubtedly much later than expected.

Mr. Tilak's troubles have been severe as also undeserved. But the lesson of his case is even for that reason all the greater. If the Government may pride themselves

upon the successful vindication of the majesty of law in their favour, Mr. Tilak has even some thing more majestic than this majesty of law, to draw his comfort from. The world of facts and public opinion have borne him out as innocent; and that is enough. He however never claims any credit for martyrdom for himself. That is a phrase which ought to be reserved for self-sacrifice in struggles far mightier and fiercer.

THE ARCTIC HOME IN THE VEDAS *

THE very idea, conveyed by the words which form the somewhat terse title of Mr. Tilak's new book, would, to most minds, strike as so strange that it will be some time before they would be able to realise the logical connection between the two expressions making up that title. The Arctic Home in the Vedas! Well, what about the Arctic Home? And how can any thing bearing upon that be founded in the Vedas, of all books in the world? Even in the case of a few who would quickly apprehend this logical connection, their fancy would not probably go further than suggesting that the new book might contain a collaboration of passages which, interpreted in the new-fangled method which unbridled and ingenious philology has made fashionable nowadays, might lead to make out that the Aryans had at one time in India a home just as the races now populating Europe are supposed to have had in the Arctic region. But vested beliefs of a long standing and a settled habit of thought generated by such beliefs about the origin of the human race, or at any rate about the oldest known home of the Aryan race, will, in ninety-nine cases out of a hundred, prevent their minds from travelling beyond the region of analogy in comprehending the scope of Mr. Tilak's new book. And the *one* who may succeed in grasping the situation at a glance will be met with eloquent unbelief if he will have the temerity to declare that the purpose of the new book shortly to be given to the public, is to prove that the Aryan

* From the *Mahratta* dated 25th January, 1st, 8th, February and 1st, 8th, March 1903.

people, and among them we people of India, represented by our most remote ancestors, at one time lived in the Arctic region, and that the evidence for this startling truth can be had in the Vedas *more* than in any other book. The idea is not only bold; it is revolutionary. Sedition-hunters need not prick up their ears at the word. The revolution would not be political, but simply ethnological. For, if the new idea stands the test of criticism, which is sure to be directed against it from all quarters, it will necessitate a re-adjustment of some of the fond beliefs to which ethnologists have clung for a long time either through ignorance or insistence. Even among the most progressive of minds there is often to be found an ingrained conservatism or partiality for ideas once approved and accepted; and to those who are aware that the late Prof. Max Muller was loth to the last to accept the latest geological conclusions in supersession of his own, based on his intense faith in the Bible, we might be conveying only more news of the same kind, when we tell them that, three years ago, after reading a detailed argument to the thesis contained in Mr. Tilak's new book, he wrote to the author to say that though the new interpretations put by him (Mr. Tilak) upon some words in the Rig-Veda might be tenable, yet for himself he had grown too old to receive the impressions of new ideas into his head! We need hardly say that it was not the old age that was the matter with the learned Professor, but only the human tendency of conservatism referred to above. But Prof. Max Muller would be only one among a hundred who would shake their heads and pay the usual ambiguous compliment to the author by saying, "Well, well, time alone will show"!

The genesis of the idea of the new book may be very briefly related. A number of years ago, Mr. Tilak's

mind was attracted to the Vedas, not from a purely literary point of view in the first instance, but from the antiquarian; and in his first book on the Vedas, the *Orion,* published seven years ago, he dealt with them in the mathematical way more or less. The degree of antiquity of the Vedas has been all along a vexed question; and Mr. Tilak's contribution to its solution was the idea, proved mathematically, that the vernal equinox was in Orion when some of the Rig-Vedic traditions were formed, and that, therefore, the age of the Rig-Veda must be at least five thousand years as this-side limit of time. And the present book, the idea of which he developed in his enforced leisure during the year 1897-98 with the assistance of the books kindly allowed by Government for his use, is, roughly speaking, an amplification or further proof of the same idea as underlies his *Orion.* When we say 'the same idea,' we do not mean that a proof of the great antiquity of the Vedas is exactly the theme of the new book. But this proof follows as a matter of course from the central proposition in the book, viz., that the ancestors of the Vedic Rishis must have lived in the circum-polar region, judging by certain descriptions and traditions expressed in the Vedic text and which are inexplicable except by the supposition that they refer to the peculiar characteristics possessed by the circum-polar region and that region alone. The conclusion about the antiquity of the Vedas is further, but incidentally, proved with the aid of the latest conclusions of geology, the mode of proof being that the above facts were possible only in the inter-glacial period which is placed at a minimum number of 10,000 years in the past.

There are three questions discussed in the book. First, whether the circum-polar region was ever physi-

cally capable of being populated by human beings; and whether there is any independent evidence to show that it was, as a matter of fact, populated at any time. The second, and the most important question is, whether and how far the different expressions, descriptive or traditional, selected by Mr. Tilak from the Rig-Veda to prove his theory, are susceptible of bearing the interpretations put by him thereupon, and so evidencing his argument. The last and perhaps the least contested question is about the probable effects which the new theory, if held as proved, would bring about in the field of ethnological and mythological thought. We will take up these questions one by one and see how the author deals with them in the book.

As regards the first question, viz., the physical possibility of the circumpolar region being habitable, it is a fact recognised by geologists that the distribution of land and water was different about ten thousand years ago from what it is now. At a time in the history of the earth, the Alps were low, the Himalayas not yet upheaved and Asia and Africa were represented by only a group of islands. Geologists divide the period of known time into five eras the latest of which is covered by three ages known as the stone, bronze and iron ages. They further hold that the two most recent subdivisions of this long period are the glacial or Pleistocene, and after that the post-glacial. This post-glacial period dates from at least about 8,000 years back. Now the point is that before the glacial period set in, enormous geological changes took place on the surface of the earth and the present climatic zones were constructed. But before this period, the climate of the circum-polar region was mild and equable. The existence of life in this region at this time is more directly proved by the

discovery of "alluvial deposits paked up with remains of animals, fossils, and human skulls." Lastly, the common conclusion of philologists, based on a comparison of the culture words in the different languages, points to the fact, that the people living at this remote time in the circum-polar region were those who are known as Aryans and who may be regarded as being almost autochthonous, that is to say, 'sprung from the soil.'

Having stated that there would not be much difficulty in accepting as the well-known result of modern geological investigations, that is to say, having made it clear that the habitation of the circum-polar region by human beings was physically quite possible at one time, Mr. Tilak proceeds to prove that the Aryans must have at one time lived in this region. Apart from the question of the climate being mild and equable at one time there, there are certain astronomical characteristics which are, so to say, eternal on account of the Poles of the earth being the same today as they were millions of years ago. These eternal characteristics again are *peculiar* only to the circum-polar region or of the nature of what are called logical differentiœ. Thus, for instance, it could be only in the circum-polar region that the sun should always be to the south of the zenith of the observer; that a large number of stars should be circum-polar, that is to say, above the horizon during the entire period of their revolution and hence always visible; that the year be made up of three parts:—One long continuous night occurring at the time of the winter solstice and lasting for a period greater than twenty-four hours and less than six months according to the latitude of the place; (2) one long continuous day occurring at the time of the summer solstice, and (3) a succession of ordinary days

and nights during the rest of the year or a day and a night together, never exceeding a period of twenty-four hours; that the dawn at the close of the long continuous night should last for several days, its duration and magnificence being different in different places according to the latitude of the place; and that the sun, when he is above the horizon during the continuous day, should be seen revolving in oblique circles round the observer without setting, and during the rest of the year rise and set, remaining above the horizon for a part of the 24 hours varying according to his position in the ecliptic. Now, Mr. Tilak contends that his conclusion as to the Aryans having had at one time a home in the circumpolar region will have to be accepted if he could show that descriptions or traditions embedded in the Vedic texts disclose unambiguous references to or indications of the above mentioned eternal differentiœ of the circumpolar region.

The author takes up these differentiœ in an order in which the conclusiveness of the Vedic evidence on this point will be in the ascending scale. He is aware that different portions of the Vedas being composed at different times, some later than others and comparatively modern, it is possible to find certain texts which may lead to the conclusion that the Vedic Rishis had as complete a calendar as we have in the Temperate or Tropical zone—a calendar in which 360 days made a year, which again was subdivided into 12 months or 6 seasons. But he urges that there are other texts also which on proper research would bear out his conclusions. The two kinds of texts, moreover, cannot be regarded as self-contradictory. For, the Vedic literature, in the first place, is not arranged into different strata according to their chronological order;

so that one might go from one stratum to another and examine each separately. Things old and new, or rather old and older, are mixed up. But fortunately they are not too inextricable for a patient research; and texts and legends which have to this day remained unexplained, if viewed in a new light, might give us valuable results. Coming to particulars, Mr. Tilak points out that from passages like *yo aesheneva chkriyaha sachibhih* (Rig. X. 89, 4) or *Avamse dyamasthabhayath* (Rig. II. 15, 2) or *sa sooryaha paryaruvarasyendro* &c. (Rig. X. 89, 2), it can be shown that to the Vedic people the heavens appeared as being supported on a pole and moving like a wheel or an umbrella turned round on its axis from east to west and west to east; and that this motion of the celestial hemisphere is such as could be witnessed only by an observer located in the region near about the Pole. Then, the constellation of Ursa Major is described as being placed on high or over the head of the observer. The year is described as being divided into two parts, viz., a day and a night. References occur to the mount Meru round which the sun and the moon revolve and which divides the year between one night and one day. This corresponds with the tradition current even in the time of Herodotus that there existed a people who slept for months. The Sanskrit text *ekam va yethath devanam Ahaha yath samvathsaraha* (Taitt. Br. III, 9, 22, 1) and similarly also the text "*Tæcha ayare main yaenta yat yare*" in the Vendidad, Fargard II—these distinctly refer to a traditional year made up of one *whole* day, half day and half night. And these should leave no doubt or create surprise if it is contended that any texts in the Rig-Veda yield a similar result on a natural or logical interpretation of them. There are certain such texts which show that what are called

devayana and the *pithruayana* originally represented a two-fold division of the year, one of continuous light and the other of continuous darkness. The *pithruyana* at any rate meant a period of continuous darkness. This throws light on the Hindu tradition that it is inauspicious to die in the *pithruayana*. And Bhishma, we know from the Mahabharata, waited on his death-bed until the *devayana* began. By way of independent corroboration, Mr. Tilak mentions similar traditions occurring in the Parsi, Greek and Norse literatures; and their import is such as cannot be easily questioned.

The evidence supplied by the descriptions of the dawn in the Rig-Veda is still more convincing. The dawn hymns are among the most beautiful in the Rig-Veda; and the results obtained by the new interpretation put on some of them would prove to be similarly beautiful. The Vedic dawn, in the first place, is a remarkably long dawn and the following are some of the references bearing on the point. In one place, the dawn is said to be made up of more than one dawn. It is described as slow, so that it seemed to be lingering on the horizon. Even a more remarkable statement is one which says "the Goddess Ushas dawned continually or perpetually in former days." Then there is a passage which speaks of two sets of dawns, with no interruption between them, one set of those that have passed and the other of those that are yet to shine; and the two together occupy a very long interval. There is also a further passage which literally says "verily many were those *days* which were afore-time at the uprising of the sun, and about which O, Dawn! thou wast seen moving on as towards a lover and not like a woman who forsakes." This like some of the earlier passages has baffled most commentators who could not make out any sensible meaning out

of it. But Mr. Tilak contends that therein certainly their knowledge of the meaning of words and of grammatical and logical rules of interpretation was not at fault. What was really at fault was the absence from their mind of an idea that the passages were composed by men who lived not in the Tropical or Temperate Zone, but somewhere near the North Pole. If the facilities afforded by the modern geological researches were available to Sayanacharya, for instance, and if his attention were directed to the gathering of ethnological information from the Vedic texts, he would surely have accepted the most natural interpretation of those passages and made them sensible and luminous enough. In putting forward his own, and the new, interpretation for public acceptance, however, Mr. Tilak is aware that the vantage ground he has obtained in interpreting these passages is only owing to the great philological and geological researches of modern time. He shows how the interpretations of these passages by Sayana and even by some of the European scholars are unnatural and irrational. And after exhaustively discussing the pros and cons of his own interpretation, he arrives at the conclusion that the references in the Rig-Veda to a plurality of dawns going round the horizon, and being continuous and together extending over a long period of time towards the end of a long night and ending in a full-blown glorious day, contain an incontrovertible indication of the phenomenon of a long dawn which is possible to be observed only in the circum-polar region. Surely it is very interesting to contemplate in the new light, thus thrown thereon, passages in which the Vedic Rishis express their terror of the "long darkness" or of "uninterrupted succession of dark nights" or "night whose yonder boundary is not seen" or "the night in old

times about which the Brahmin priests were afraid that it might not dawn at all." If the long duration of the Vedic dawn is once proved, it is, Mr. Tilak contends, astronomically speaking, unnecessary to search for evidence regarding long days and long nights. But even independent evidence on the point is directly supplied by Vedic texts; and in the text *dheergham thatkana sooya na yojanam* he finds a reference to an extended daily course of the sun as also in the text *vi sooryo madhye amuchathu rattham* &c." (Rig. X, 138, 3); the former meaning that "the sun extended his strength and greatness" and the latter meaning that "the sun unyoked his cart in the midst of heaven," thus indicating a long halt of the sun in heaven in his course.

The broad facts about the more important circum-polar characteristics being noted, Mr. Tilak proceeds to consider the evidence on the traces of the conditions of the Arctic seasons, months or years to be found in the Vedas. The first question here would be whether the Vedic year ever consisted of less than 12 months, as would be the case in the circum-polar region. Evidence on this point is to be found in certain legends as well as in the passages relating to the sacrificial ceremonies of the Vedic Rishis. And it is contended first that the legend of Aditi and her sons, the seven Adityas (suns), is here in point. According to this legend, Aditi approached the God with seven sons and cast out the eighth called Martand. After discussing the several interpretations on this legend, Mr. Tilak points out that if by a reference to the twelve Adityas the twelve months of the year are allowed to be meant, then the seven or eight Adityas referred to above must also be taken to mean seven or eight months; and the explanation of the legend of Aditi would be, according to him, that after seven months of

sunshine came on darkness. The other references to the sun being a still-born son or a cast-away bird must be interpreted as indicating the state of things in which the sun was expected to rise but did not. The duration of Satras or sacrificial ceremonies is often found to be used as a measure of time. And there are texts showing that the year-long sacrifice had to be performed sometimes in ten and sometimes in nine months only, which indicates that the year was made up not of twelve months but less. The year being thus possibly of 10 months only, it cannot be surprising if it could be found that the seasons of the year at one time were five only. In Rig-Veda (I, 164' 12) there is a text which makes mention about a tradition of the year-god having five feet instead of six, meaning a year of five seasons; and this explanation makes the statement intelligible that "the sun in the latter part of the year sent to dwell in watery vapours in the farther part of the heaven." The Pravargya ceremony gives a clue to the year being short in very ancient times. This ceremony symbolises the revival of the yearly sacrifice along with the dawning of day after a long interval of darkness. From the description of the ceremonial of the many annual Satras, it can be seen that they had been originally established in imitation of the sun's yearly course, and in the description of one of such Satras, in particular, called the Cow's Wa, there is a distinct mention of a 10 months' duration of the Satra in the text meaning "that the cows gained the object of their desire at the end of ten months." This old practice was retained through conservatism even after the Aryans migrated down to the Temperate and Tropical regions and the calendar was changed; and the force of conservatism is so great that the old and compulsory practice of finishing the

yearly sacrifice in ten months has been recognised, even to this day when it is no longer necessary, as an alternative course for a Satra of twelve months. The tradition of the year at one time being only of ten months is shared by Europeans also. Thus December, which is the last month of the year, literally means the 10th month; and it is well known that the Roman king Numa added two months to the ancient Roman year. The remaining two months were evidently the months of total darkness or a long night; and such a period might naturally give rise to legends like the one in which Indra is said to have faught with Vala to regain the cows imprisoned by the latter, or the one of Hercules who killed the gaint, Cacus, a three-headed, fire-vomitting monster who had carried off Hercules's cows and hidden them in a cave. The meaning of the word cows has been greatly contested; and Mr. Tilak settles it as meaning 'days and nights' or dawns. This meaning explains the expression, 'the sacrifice of the cow's walk,' and also legends such as the one about 350 oxen or sheep of Helios which would be 360 days of the year minus a night of 10 days. That this supposition is not fantastic may be shown by the fact that, as pointed out by Prof. MaxMuller, the old Greek year probably consisted of 350 days; and that the carrying of cows or oxen would be a figurative form of saying that so many days were lost or swallowed up in the long night that occurred at the end of the year. Then, again, the old 100 *nightly* sacrifices, which are now accommodated in the day sacrifices, were, there is reason to suppose, performed actually in the night time extending over a space of about 100 nights. This nightly sacrifice was perfored in order that the libations offered therein should help the gods to expel the Asuras or the Demons who were

supposed to have taken shelter with the night. Indra was the deity to fight with these powers of darkness, and to him were these libations in night-sacrifices to go. As the Laplanders now do their business in the long darkness, gauging time by the stars according to their height, so must have the old Vedic Rishis utilised their time in performing their sacrifices to enable Indra to fight out darkness and usher in light. A hundred continuous nights in the home of the Vedic people make the conclusion irresistible that this home must have been somewhere near the Polar region.

The summary given above on this subject may be taken to practically close the case in favour of Mr. Tilak's new theory so far, of course, as the Vedic evidence itself is strictly concerned. But there is an amount of circumstantial evidence to be found in the Avesta and the mythological and legendary literature of the Aryan races in Europe, which swells the probability of the conclusions Mr. Tilak has sought to establish by a research into the Vedas from a new point of view and with suggestions of new interpretations of texts hitherto regarded as obscure or only interpreted in a somewhat fantastic manner. The circumstantial evidence does not appear to have been regarded by Mr. Tilak himself as being in itself of a superior value as compared with Vedic evidence; but apart from the consideration of making the case complete, there would be an advantage in presenting the circumstantial evidence for the consideration of the European scholars who would find it less easy to disregard the obvious significance of the references from their own mythological and legendary literature than to contest the interpretations which Mr. Tilak has put upon certain Vedic texts. The evidence afforded by the Avesta and the mythology

of European Aryans cannot be logically called direct evidence. For it does not indeed directly prove that the circum-polar region in the North was at one time inhabited by those Aryans who have inherited the Vedas as their religious heir-loom. But it is a very important kind of indirect or circumstantial evidence bearing on the probability of Mr. Tilak's conclusions. For, if it could be shown that the religious literature of the Iranians in Asia and of some classes of the Aryans in Europe points to the home of these different people being located in the extreme North, there should be no difficulty in reconciling the mind to the contention that the Indian Aryans also might have at one time lived in that place. In fact, this circumstantial evidence is peculiarly such as would successfully appeal to minds which are unsusceptible to reason or which might not have got the necessary degree of courage to see Mr. Tilak's new interpretations of Vedic texts full in the face and to accept the conclusions based thereon.

As regards the Avesta, it is universally admitted that this Iranian Scripture is but a branch of the same parental tree from which the Vedas have sprung. Now, while, on the one hand, the Avestic legends show that a day and night of six months each and a long darkness extending over a hundred nights were known to the ancestors of the Iranians, on the other hand, there is a clear passage in the Avesta which refers to an early Iranian home near the North pole, which home had to be shifted, as the passage further shows, owing to the advance of snow and ice. This passage is to be found in the first two chapters of the Vendidad or the law-book of the Mazda-Yasnians. After discussing the various interpretations put on this passage by European scholars, Mr. Tilak asserts that it only con-

firms his theory about the Aryan Home in the circum-polar region. The passage graphically describes how in the several happy regions created by Churmazd the people were visited by Angramainyu or the genius of evil, how the climate there was suddenly changed from mild to severe and the people had to migrate and came down step by step according to a timely warning given by Ahurmazd himself against the advance of snowy and fatal winters. There is also scattered evidence in this passage which speaks to an observation by ancient Iranians of such Arctic characteristics as a year of ten months followed by a long night of two months, or a year-long day and night and a single rising of the sun during the whole year. The statements about all these are too graphical and plain to be accepted as simply prompted by imagination; and the partly successful attempt to identify the landmarks, mentioned in the Avestic passage as indicating the different stages in the southward migration of the Iranians, with certain well-known modern geographical names practically completes the chain of the Avestic argument.

As for the evidence from the mythological literature of the European Aryans, it is in the nature of things less conclusive. But even such as it is, it marks the persistency with which the tradition of an early Aryan Home in the circum-polar region has maintained its own place. The fact that the ancestors of European Aryans and some other people appear to have lived in the pre-glacial period at the extreme North does not fatally conflict with Mr. Tilak's theory. Such a coincidence can only corroborate the theory, especially as the Vedas speak of Panch-Janas or five different kinds of people—races with may be regarded as having come in conact with each other in the early Arctic Home and preserved

for some time their distinct entities. Well, a review of this legendary and mythological evidence leads Mr. Tilak to select some remarkable and significant coincidences. Thus in the Lettish mythology the dawn is called the sky-daughter; and the Lettish poets, like the Vedic bards, speak of *many* dawns or "many beautiful sky-daughters." In the Greek mythology we have "several coloured wives of Heracles" one of whom is Eone who cannot be separated from Eos, dawn. According to Professor Rhys, the Celtic mythology pictures *many dawns* to whom the sun-god made love in course of the year. Then again, the ancient Roman year consisted of only ten months, and the ancient Celtic year and the old Norse year were also short years. The sun-god in the Celtic mythology would recover his bride at the beginning of summer after his antagonist had gained possession of her at the beginning of winter. Persephone, daughter of Zeus, carried away by Pluto, was retained by him for six months in the year. Demeter or mother earth rejoiced for six months in the presence of her daughter, Prosperine, and for six months regretted her absence in dark abodes beneath the earth. The first battle of the Celtic Moytura with his enemies, like that between Indra and Shambara, was fought when the Celtic year began with the ascendancy of the powers of darkness. The old Norse year was even shorter than the Celtic one. According to comparative philology there were only two parts or divisions of the ancient year, that is to say, two long seasons. The story of the maid of nine forms in the Celtic mythology is only a paraphrase of the nine-going sacrificers in the Rig-Veda. In the Norse mythology, Thor, the son of Earth, slays the World-dragon, walks nine paces and dies of the venom of the serpent. This

evidently means that the sun shone only for nine months and then succumbed to the powers of darkness. Prof. Rhys, again, distinctly suggests that the meaning of the fact that the Norse sun-god had a dwelling place in the heavens, could only be that the sun remained shining for a long time in the heavens. "This seems to refer" says he, "to the Arctic summer when the sun prolongs his stay above the horizon. The pendant to the picture would naturally be his staying as long in the nether world". Take also the Slavonic legend of Ivan the Simpleton, who lived in the land where there was always night and killed the twelve-headed serpent before light dawned throughout the whole land; or the Finnish legend that Koi, the masculine dawn and Ammarik, a female, were allowed to meet at midnight during four weeks in summer and Ammarik hands over the torch of Day to Koi, who revives it with his breath. Further, the phenomena which are represented by these struggles or amorous engagements were understood in most of the Western mythologies as a matter of *annual* recurrence. It is remarkable that Prof. Rhys regarded these legends and these mythological references as clearly indicating that they related to phenomena observed annually by the ancestors of the Celtic, Teutonic, Latin, Slavonic, and other races, who at one time inhabited an extremely Northern region, he even says, "*some spot* within the Arctic circle." And it may easily be imagined how the Professor would have been delighted to find ample corroboration coming to his theory from the most ancient literature in the world.

After setting out in a lengthy summary the principal points and the general argument about Mr. Tilak's theory of the evidence of the Vedas relating to an early Indo-Aryan Home in the circum-polar region, we propose

to conclude this series by briefly forecasting the nature of the changes that will be probably wrought thereby in some of the existing and vested beliefs. According to Mr. Tilak's own estimate, his theory, if accepted, is "sure to revolutionise the existing views regarding the primitive history or religion of the Aryan races." One of the most prominent and useful results of this revolution will be the confirmation, more than ever, of the theory that the Aryan civilization originated at one time in the West and progressed towards the East. This theory has an interesting history, and it is only during the last twenty years that it has been able to successfully grapple with the counter theory of the Caucasian tableland being the original home of the Aryans and their civilisation, and that the dominating sway of the aphorismatic argument "*ex oriente lux*"—the path of the sun must be the path of culture—has been perceptibly shaken. In his masterly summary of the history of the Aryan controversy, in the book called the "Origin of the Aryans," Mr. Issac Taylor has shewn how comparative philology first directed the attention of the literary world to the community of ideas and culture-words to be met with in the different Aryan languages, but how comparative philology also gave birth to the superstition that common ancestral speech meant common ancestry in race; how the French anthropologists first raised a protest against this superstition; how Dr. Latham in 1851 argued that judging by the fact that the Asiatic Aryans looked like a small detached portion from the great cluster of European Aryan races, the former must have migrated to the East and not the latter to the West; how seventeen years later Prof. Benfey pointed out that some of the animals and trees with which the primitive Aryans were acquainted were indigenous to the temperate zone and

that, therefore, the special knowledge of beasts and trees peculiar to the tropical zone must have been acquired by the Asiatic Aryans after their migration from the West to the East; how the geological finds about the same time bore out these conclusions; how Posche and Penka first claimed for anthropology and archæology a right to correct the conclusions of philology on the ground that language was mutable but race persistent; and finally, how Dr. Shrader took the assistance of philology itself to support the West-to-East theory. Now Mr. Tilak's theory, if established, would only confirm Dr. Shrader's arguments by conclusively proving that the Asiatic Aryans did once live in the circum-polar region and that they must be a body detached from the cluster of Aryan races in Europe and are now inhabiting Asia as the result of a migration. Mr. Tilak's theory further goes to prove that the primitive Aryans in the inter-glacial epoch were not like the savages of the present day, but were far more advanced in civilization. If the civilization of some of the Aryan races, once inhabiting the extreme north in this period, were found to be in the neolithic age inferior or imperfect, it may be explained by the fact that those races underwent retrogression, or that the Asiatic Aryans were better able to preserve and improve upon their civilisation by incorporating the old traditions into their religious songs and hymns. Mr. Tilak's theory, however, cannot be expected to throw light on the interesting question as to when or where for the first time the Aryan race was differentiated or separated from the other human races, much less on the still more interesting question as to whether the theory of Monogeny or Polygeny is correct, that is to say, whether mankind originally descended from a single pair, in a single locality or from several pairs developed in different

localities by parallel but not strictly identical lines of evolution.

It may be argued that even supposing that the Asiatic Aryans once lived in the Asiatic region, what is there to prevent one from supposing, notwithstanding, that the migration of the Aryans from West to East may be a second and not the first migration, the first being from East to West and at a proportionately early time? Mr. Tilak has neither anticipated nor answered such a question. But in fact, it will be impossible not to count with such questions, especially as we know that in spite of positive evidence, men like the late Prof. Max Muller have been found to express a bold and inveterate conviction, which has all the weakness and strength of an intense faith, in the theory of the migration of civilisation from East to West. Thus writing so late as 1887, we find the learned Professor maintaining his views in these words:—"If an answer must be given as to the place where our Aryan ancestors dwelt before their separation ...... I should still say, as I said forty years ago, 'Some-where in Asia' and no more". And for ourselves, we confess, we wish that the East may after all be proved to be the first home of civilisation. But we must also perceive that the argument about the last being a second and not the first migration of the Aryan race lands us in times which are beyond the inter-glacial period and with which there are at present no means of dealing. The evidence, again, that is forthcoming, relates so far only to the West-to-East migration, and though the Aryans may be supposed as well to have migrated before that from East to West, there is absolutely no evidence at present pointing to that event. But we may take it that though Mr. Tilak has ranged himself on the side of the West-to East theory-wallahs, yet

it cannot, we suppose, except perhaps in jest, be used as an argument that he has given up his feelings of love or patriotism for the land he lives in. We think, on the other hand, the fact proves, if any thing, that patriotism cannot be a feeling appertaining purely to locality as will be easily appreciated by those who, for instance, have an opportunity to be born in one Province, to be bred up in another Presidency, to be educated in a different country altogether, to settle and make their life's career in another continent, and yet to have the best traditions to their race attached to another continent still. If we can be convinced that our race was born near the North pole, we may certainly begin to feel a partiality and affection for the place; but that should only create in us a desire to regain the Arctic region, as the present day Jews are thinking of regaining Jerusalem, and not wean away our affections from India, a place with which our best traditions in the immediate past and our best aspirations in the immediate future are so tenderly entwined.

THE TAI MAHARAJ CASE *

"He was not all unhappy. His resolve
Upbore him, and firm faith, and ever more
Prayer from a living source within the will,
And beating up through all the bitter world,
Like fountains of sweet water in the Sea,
Kept him a living Soul."

Tennyson.

THE Judgment of the Bombay High Court delivered on Thursday last, in the matter of the application by Mr. Tilak for a revision of the sentence and order of Mr. Lucas, the Sessions Judge of Poona, is a Judgment of acquittal by the highest court of Justice in this Presidency; and it sets the seal of finality to the Criminal proceedings which originated in Mr. Tilak's commitment by Mr. Aston, as District Judge, to the City Magistrate of Poona on the 4th of April 1902, for being proceeded with according to law in the matter of no less than seven charges of varying degrees of criminality. It is *twenty-three months* since then, and it may, we think, be conceded without challenge or difficulty that this long period must have proved extremely trying to us on account of the dead silence which the fact of the case being *sub-judice* perforce imposed on us, when obviously we had a number of things, accumulating and crowding from day to day, to tell our readers in connection with the scandalous career of the proverbial Ass of the Law which was set in motion by Mr. Aston. Writing on the subject in our issue of 30th August last, when Mr. Clements' judgment had been given and the case had arrived at the first definitive stage, subject to appeal or

* From the *Mahratta* dated 6th March 1904.

appeals to the higher authorities, we remarked that it had already been a very hard discipline for us to have held complete silence over the case for eighteen months, but that we might as well continue to submit to that discipline for a little while longer. Four months more, and the case seemed to be nearing its termination by the Judgment of the Sessions Court. While referring to the case in our issue of 10th January last, we did not feel as if the gag from our mouths was removed. But we had at least the satisfaction of informing our sympathetic readers, who were evidently watching the Tilak Case from stage to stage with a feeling of sadness and longing almost akin to pain, that the complicated issues involved in the voluminous and labrynthine record were being unravelled gradually; and the full text of Mr. Lucas' Judgment, which we printed in the same issue, must have cleared up for them the greatest part of the misty sheet of injustice and calumnious misrepresentation to which Mr. Tilak was subjected in Mr. Clements' Judgment. A couple of months more, and we can now enjoy the privilege of opening our heart to our readers under conditions certainly far more cheerful than we could have anticipated in the darkest hour of Mr. Tilak's misfortune. We naturally feel as if a dead weight has been lifted from our heart; and without being charged with theatrical ecstasy of delight, we may be, we think, permitted to announce that Mr. Tilak emerges after all unscathed and with flying colours out of the memorable inquisition and the fiery ordeal which had been ordered for testing his veracity! But by no means do we stand alone in the enjoyment of a feeling of relief. For we do know that the interminable Tilak Case had scandalised and proved a source of an excruciating anxiety to persons even less concerned than ourselves, and we feel we share

our sentiments of joy at this moment with thousands and thousands of Mr. Tilak's friends and sympathisers scattered throughout the length and breadth of the country. The testimony of public sympathy which had not failed him even when the hour was darkest and which was, therefore, then most gratifying and consolatory to Mr. Tilak, has been of course renewed in significant abundance during the last three days, and Mr. Tilak must necessarily feel more than compensated thereby for the tribulation and anguish that he had to suffer day and night for the last nearly two years. There is a sustaining virtue in the public sympathy which is, in some cases, more potent than that of the strongest faith that one may have in him; and Mr. Tilak may claim at this moment, without any undue exultation, that he has been fortunate enough to combine these two at their best in him. There was hardly an instance of legal persecution more trying than this one, in which Mr. Tilak was all but victimised, perhaps in the whole annals of the administration of justice in this country, and the public satisfaction over the happy result is naturally in proportion to the magnitude of the scandal, thanks to the stern independence of the Chief Justice and Batty, now happily averted by the High Court decision.

This Maharaj family is descended from one Shri Rambhatji Dev, a Yajurvedi Deshastha Brahmana who lived in the latter half of the eighteenth century at Babre in the Aurangabad District in the Nizam's dominion, and was the hereditary Joshi of Babre and nine other surrounding villages. Rambhatji had two sons, Shri Harabhatji the elder and Shri Siddheshwar the younger. This younger son (1743-1811 A.D.) soon became distinguished for his spiritual greatness and was eventually elected as the preceptor and adviser by Shivaji II, the

then reigning Prince at Kolhapur. This led Siddeshwar to establish himself at Kolhapur; while his elder brother Harabhatji remained at Babre. Shri Siddheshwar, alias Boa Maharaj as he was called, died in about 1811 A.D., leaving behind him three sons named Baba, Nana and Bhau. Nana had no issue, and the present Kolhapur branch of this family is, therefore, descended from the two remaining brothers. Of these Baba lived at Kolhapur and Bhau, exchanging religion for politics, came up to Poona, as a Vakil of the Kolhapur Raja, and is said to have assisted the Honorable Mountstuart Elphinstone in establishing peaceful relations between the British Government and the Raja of Kolhapur, even before the termination of the Peshwa's rule at Poona. A reference to Aitchison's Treaties, Vol. VI, will show that the interests of Baba and Bhau were specially protected in the Treaties made by the British Government with the Kolhapur Durbar, the latter agreeing never to molest possessions or lands or right of Baba Maharaj and Bhau Maharaj during their life-time and to continue the same unmolested to their descendants. Bhau Maharaj, who settled at Poona, died in about 1837 A.D., leaving behind him two sons, Tatya and Dada, who divided the estate consisting of Inams ancestral and self-acquired; Tatya continuing to live at Poona, while Dada and his descendants went to live at Kolhapur. The late Wasudeo Harihar alias Baba Maharaj, with whose estate we are concerned in this case, was the adopted son of Tatya. He was a child when the adoption took place, and the estate was managed during his minority by his adoptive mother, the late Umabai Saheb. When Baba Maharaj attained majority and claimed the estate, he found that his claims were opposed by his adoptive mother; while his cousin Nana Maharaj went so far as

to challenge the adoption itself. This involved the estate in a heavy litigation ; and when Baba Maharaj was declared the rightful owner thereof, it was burdened with debts.

It is now but common knowledge that the Tilak case arose in an order under section 476 of the Criminal Procedure Code, dated 4th April 1902, with which Mr. Aston, District Judge of Poona, capped the lengthy and and voluminous proceeding in the matter of an application before him by the late Tai Maharaj for the revocation of Probate granted to Mr. Tilak along with three other trustees of the estate of the late Shri Baba Maharaj, a first class Sardar of Poona. But to understand the bearing of this application itself one must go back a pretty long way. And curiously enough, the real beginning of the present State prosecution coincides with what was only an initial stage in another State prosecution to which Mr. Tilak, who has always been a *bete noire* with Government, was subjected in 1897, as the result of the Ganeshkhind murders. Mr. Tilak was arrested at Bombay at the end of July 1897, but was released on bail, pending the trial, by the High Court on 5th August. He immediately returned to Poona to commence preparations for his defence, only to find that misfortunes never come singly. For on the very day of his arrival at Poona, his friend, Shri Baba Maharaj, was suddenly attacked with cholera. It is now an open secret that the swiftness with which certain events of terrific import occurred one after another during that week had spread over the Poona public a vague terror, a state of mind in which wild beliefs easily take root. And one of such beliefs was that Shri Baba Maharaj, being a Sardar and an intimate friend of Mr. Tilak, had poisoned himself in order to avoid the fate which had overtaken his compeers,

the Sardars Natu and his friend Mr. Tilak. The belief was evidently foolish. But even nightmares have sometimes to be seriously dealt with and Mr. Tilak, who was summoned in the early hours of the early 7th of August to the death-bed of his friend, suggested the advisability of calling in the Civil Surgeon who might attest his will, if any, as well as certify to the real cause of Baba Maharaj's death, so that much unnecessary subsequent trouble and scandal might be saved. The making of a will was first suggested by Mr. Tilak himself, who knew that the estate was burdened with debts and that his friend was leaving behind him a young widow of about fifteen. How happy would it have been for all concerned if Mr. Tilak had been released *only twenty-four hours later!* For, in that case there would probably have been no will and no fastening up of the fatal trusteeship on Mr. Tilak. But Fates willed it otherwise, and by a cruel irony, the one useful act of friendship that Mr. Tilak had an opportunity to do during a couple of days he could spend at Poona as the result of his release on bail, had in it the seeds of another criminal prosecution against him, far more terrible and trying than the one which was then just initiated by his arrest and release on bail. But let us resume the story of the eventful will. As the best friend on the spot and an acknowledged lawyer, it fell to Mr. Tilak to make a draft of the proposed will, and it is now in evidence that Mr. Tilak had in that draft first put in the names of one Keshav Rao Ranade and Nana Phadke, witnesses against Mr. Tilak in this case, as trustees on the supposition that they, being friendly neighbours, would be naturally confided in by Baba Maharaj. Even with the shadow of death upon him, however, Baba Maharaj had not lost all discernment; and knowing full well that the very

object of making a will and creating a board of trustees would be defeated by the appointment of two such men as executors thereof, got their names struck out and inserted the names of Mr. Tilak, Rao Saheb Kirtikar of Kolhapur, Mr. Khaparde of Amraoti, Mr. Kumbhojkar, a friend and Vahiwatdar of the Kolhapur estate, and Mr. Nagpurkar who was a managing Karkun of the estate for sometime previous to these events. Mr. Tilak was very unwilling to take up the burden, but he could not persuade himself to be stern enough to refuse what was obviously the last wish of a dying friend. In what spirit, however, did Mr. Tilak at all enter into the transaction will be told in another place. Suffice it to say here that it must have certainly added to the unpleasantness of his situation at the time to have returned to Bombay, with a State prosecution for Sedition staring in the face, after entailing upon himself a heavy responsibility, though for the posthumous welfare of a dear friend and a representative of one of the old aristocratic families in the Deccan. Rightly or wrongly he believed that the Maharaj family, which had suffered much in the immediate past, would be regenerated, so far as such regeneration was possible in these times, if a natural or adopted son and heir to his friend could be kept under unexceptionable tutorship, be given a good education, and thus fitted to take up his share of work and responsibility in the cause of public service as a leading man of the city of Poona. And the historical traditions of the family lent a glamour to such a belief.

Well, on the 7th of August 1897, Shri Baba Maharaj died, and Mr. Tilak himself was convicted and sent to jail for eighteen months on the 14th of September. The will, entrusted for execution to the trustees above mentioned, was a simple document. It authorised them to

hold and to manage all the movable and immovable estate of the deceased in the same way as he himself would have done until his posthumous son, if any (for he expected that his wife who was then *enceinte* would give birth to a son), or failing him, a son to be adopted with the consent of the aforesaid gentlemen as trustees, attained the age of majority. Now, of the five trustees, R. S. Kirtikar refused to take up the responsibility of a trustee as he always lived at Kolhapur, and Nagpurkar and Kumbhojkar had admittedly no higher capacity or status than that of clerks. The one man, who, if, on the spot, would have been looked to for guidance and initiation in the management of the estate was Mr. Tilak: but he was in jail. So it naturally devolved on Mr. Khaparde, a leading pleader at Amraoti and a near relation of Baba Maharaj, in fact the father-in-law of one of his daughters, to step in Mr. Tilak's place. It was he who, at considerable self-sacrifice, managed to have the Probate taken out, inventories made and a scheme of debts and assets framed, supplying a working basis for the liquidation of the former, a budget for the maintenance of Tai Maharaj, and provision for the maintenance also of the dignity of the Estate. Tai Maharaj gave birth to a son as expected, but unfortunately he died within two months of his birth. The contingency of an adoption, therefore, arose and the young widow, well aware of the beneficent intentions of Mr. Khaparde and Mr. Tilak, cheerfully accepted her position as the titular representative of the estate with the real and effective ownership being vested in the trustees, appointed by her husband's testament.

But, though in jail, Mr. Tilak's work in connection with his friend's estate had commenced from an early date. Twice was he consulted in jail, and his opinions

taken in writing on questions, also set in writing, as for Counsel's opinion. On being released from jail on the 6th of September 1898, he was called upon to take up the work of a trustee on the spot, though for some time afterwards, he could not actually devote much time to it owing to bad health. But as soon as he could take up the work he found of course two matters urgently waiting for disposal. One was the liquidation of debts and the curtailment of expenditure as the only and necessary means to that end, and the other was the giving a boy in adoption to Tai Maharaj as owing to plague then raging in Poona, human life was uncertain in the city, and Tai Maharaj was of course the only person who could adopt a son to her husband. Both these matters unhappily contained the germ of the future dispute. The liquidation of debts meant the curtailment of expen diture, and this could not be very agreeable to Tai Maharaj who fancied herself to be the equitable owner of the estate and regarded her possible divestment by an adopted boy as a legitimate grievance. There were also harpies who fed on her, had made themselves more or less dear to her as the objects of idle amusement in her widowed leisure, and who gradually and slyly nestled into her confidence as counsellors that whispered agreeable words and made pleasant suggestions. They magnified to her eyes the sad points in her future plight as a mere pensioner and a dependant upon the estate when, if she had but the will, she had also a way to remain independent for ever or at any rate make terms with the boy who would like to sit in her lap and take the estate even as conditioned by her with a farsighted eye to the welfare of herself and her most favourite and actively co-operating counsellor. But even such a limited and conditioned estate may be a fortune to many

boys who were comparatively poor as they were, and would gladly seek adoption or be persuaded thereto by their brothers, for instance, who, in the event of such an adoption, might find their own means appreciably augmented by at least one lawful sharer being cleared out of the way to the ancestral estate. And all this did happen in the case of this unfortunate lady. The cutting down of the budget caused her alarm, and the machinations of the unscrupulous party led by Nagpurkar and Pandit Maharaj of Kolhapur, who entered into a conspiracy to get Tai Maharaj to adopt Bala Maharaj, Pandit's brother, were encouraged by her fitful moods. But neither Tai nor Nagpurkar had courage enough to openly oppose the trustees, the former having all along a deep rooted conviction that the trustees, viz., Mr. Tilak and Mr. Khaparde would do nothing that might either benefit themselves personally or compromise the posthumous welfare of her late husband. And at any rate there was admittedly no dis-agreement between them and her up to the 18th of June, 1901, the day when they all finally decided upon the adoption of a boy from the Babre branch of the family if available.

So far for the self-imposed share of Mr. Tilak's labour in connection with the duty he had undertaken. All else to this day has been involuntary! At the outset it is necessary to point out that, as is stated by Nagparkar himself in his evidence, Mr. Tilak was unwilling to go to Aurangabad, and if he had but not gone there all the subsequent bother would have been saved. There might or might not have been an adoption at Aurangabad in that event. But of this we may be sure that the present fantastic denouement of the drama would have been rendered impossible. In fact there is a world of would-have-beens in that direction with which, however, we

are not concerned here. It is fruitless to conjecture what would have happened if Tai Maharaj, for instance, had died without making any adoption, or returning from Aurangabad without making any adoption, had adopted Bala Maharaj somewhere secretly and without the knowledge of the trustees. Our point is that even Mr. Tilak's trip to Aurangabad was an involuntary act on his part; and that he had to enter the subsequent terrible litigation was also an involuntary act because having brought about an adoption at Aurangabad, as the principal trustee entrusted with the business, in consequence of this involuntary trip, he had to see that it was not to be annulled and all his useful labour simply wasted. Such annulment might have benefited Tai Maharaj, her favourite Nagpurkar, and Pundit Maharaj; but it involved the prestige of Mr. Tilak and Mr. Khaparde who had gone out of their way as it were to seek for a boy in such a distant place as Babre in the Nizam's dominions simply in order that an association, by adoption, with the notorious traditions of some of the Kolhapur branches of the family should not bring dishonour upon Baba Maharaj's Estate. This would be sufficient explanation why, as some well meaning but short-sighted critics sometimes observed, Mr. Tilak did not wash his hands of the matter as he saw that the weak vessel, Tai Maharaj, was drifting away from the moorings of truth and her own conscience, by the breezy influence of Nagpurkar. Mr. Tilak must have indeed felt disgusted to have to deal with such parties as were opposed to him, but a superior consideration with him was to deal with them as they deserved, in order that the higher purpose of doing good service to a dead friend might be accomplished. His labours, therefore, to prevent a second adoption at Poona and to get legal

confirmation of the first adoption at Aurangabad, though strenuous in the extreme, were involuntary, that is to say, such as he could not have possibly avoided as his personal honour was bound up with the maintenance of the results of the original involuntary trip to Aurangabad. The change of mind in Tai Maharaj led her to challenge the Probate as a possible means to the removal of the trustees out of her way altogether, and she being the applicant for revocation of the Probate the opposition of Mr. Tilak to the application must also be allowed as an involuntary act. Now in the proceedings of this application, Mr. Tilak was cross-examined by the party who called him as well as by the Judge, and the involuntary nature of his statements made therein will be seen from the fact that his refusal to make any one of those statements would have been treated as contempt of Court. In these statements Mr. Aston, upon whose mercy in his capacity as agent for Sardars in the Deccan, Tai Maharaj had thrown herself before making this application, hunted out criminal matter that he thought needed investigation, and, once more and finally, it has to be pointed out that the criminal proceedings and all that they involved was also obviously involuntary so far as Mr. Tilak was concerned. In fact once it is admitted that Mr. Tilak went to Aurangabad only under the pressure of his colleagues, it is impossible to say that he could have reasonably or safely stopped at any point in the subsequent proceedings till the latest stage. Mr. Tilak did exert hard throughout, in fact he fought inch by inch against all odds in all this; but all along he was doing things which he would have been extremely glad to leave undone, only if they were in the least unnecessary for vindicating truth and his personal honour.

With this brief preface we proceed to give a running

narrative of the events as they occurred in this and what may be called the involuntary sequel of Mr. Tilak's discharge of his duty towards this deceased friend Baba Maharaj. And we may take the 29th of July 1901 as the starting day of this sequel as on that day was Tai Maharaj's application for the revocation of Probate filed in Mr. Aston's Court. The proceedings in this application lasted from that date to the 3rd of April 1902. Altogether about thirty four sittings were held out of which so many as 14 were taken up by the cross-examination of Mr. Tilak under the united battery of Mr. Aston and Tai Maharaja's Pleaders. The principal noticeable point in these proceedings is that the Aurangabad adoption, though not raised to the issue, was forced in by Mr. Aston as almost the principal question to be decided; and a whole flood of documentary and oral evidence bearing on it from the side of Tai Maharaj was let in, in spite of Mr. Tilak's challenge and protest to the contrary, through the wide floodgates of Mr. Aston's ideas of the Law of Evidence on the point of relevancy. The specific issues raised were only whether the grant of Probate to Mr. Tilak and others had become useless and inoperative through the birth and death of a son to Tai Maharaj and whether the executors had become unfit to act in the Trust so as to make the appointment of new trustees necessary. On these issues Mr. Aston decided in the affirmative, held the Aurangabad adoption disproved, revoked the Probate and ordered the costs, *as in a suit*, to be borne by Mr. Tilak and Mr. Khaparde personally. The Judgment is a lengthy document of about 40 printed foolscap pages, but 90 per cent of it is devoted to findings and criticism upon facts relating to wholly irrelevant matters such as the alleged confinement of Tai Maharaj at Aurangabad, the Auran-

gabad adoption, the alleged use of force to Bala and Pandit Maharaj and alleged confinement of Tai Maharaj at Poona—matters which, it must be remembered, Mr. Tilak had protested against as irrelevant and relating to which he did not put in a single scrap of evidence except by his own answers given under compulsion, and upon which he instructed his Pleader to let him severely alone in examination by him. Obviously, therefore, there was only a one-sided account of all these matters before Mr. Aston, and yet he did not scruple to draw conclusions and make criticisms as if he had all the possible evidence from Mr. Tilak's side before him.

The record of Mr. Tilak's cross-examination is full of notes made by Mr. Aston in order to discredit his behaviour and truthfulness. These notes show that undue advantage was taken by the Court of Mr. Tilak's helpless condition, as a witness in the box, to deliberately tease, provoke and insult him and, not content with this, to misunderstand and also misrepresent him on record by the very questionable method of interrupting and twisting the witness's answers so as to give the whole an appearance of shuffling, quibbling and prevarication on Mr. Tilak's part. He has, in his judgment, also used choice language of abuse about Mr. Tilak which was altogether unjustifiable and discreditable to the position of an impartial Judge. He held Tai Maharaj and others to be truthful witnesses; but as regards Mr. Tilak the Judge held that he gave his evidence in an untruthful manner. The last note of Mr. Aston, at the end of Mr. Tilak's deposition, is in these words:—"Fencing, prevaricating, quibbling witness; demeanour distinctly untruthful. A great deal of time wasted by ambiguous replies to plain questions which were repeated over and over again. Witness was repeatedly

cautioned about fencing." A Judge or a Pleader, however, may conceivably be as much guilty of fencing with a witness's inconvenient answers as a witness may do with trapping questions put to him. And the only comment needed in the present case is to state the fact that with regard to some of the answers given by Mr. Tilak, the learned Chief Justice has remarked in his judgment that the cross-examining Pleader (and we might say also the Judge) did not or would not understand them! As the result of the Inquisition over which he presided, Mr. Aston found that Mr. Tilak had not only deserved discredit by revocation of Probate, but had committed a number of offences in the transactions brought to his notice, and he crowned the improper and illegal proceedings in his Court as a Civil Judge by taking action under 467 of the Cri. Pro. Code, and committing Mr. Tilak to the City Magistrate to be dealt with according to law. The charges formulated against him were seven and as follows:—(1) Making false complaint for breach of trust against Nagpurkar. (In this connection Mr. Aston even went out of his way to induce Nagpurkar to put in an application for sanction under sec. 195 Cr. P. C.) (2) Fabricating false evidence for use by making alterations and interpolations in the accounts of the Aurangabad trip. (3) Forgery in connection with the above. (5) Corruptly using or attempting to use as genuine evidence—evidence known to be false or fabricated in connection with the attesting endorsement of Tai Maharaj on the adoption deed. (5) Corruptly using as true or genuine evidence the said adoption deed. (6) Fraudulently using as genuine the adoption deed containing his interpolation over Tai Maharaja's signature. (7) Intentionally giving false evidence by ten sentences grouped under three sub-heads relating to (*a*) the fact of

adoption at Aurangabad, (*b*) Tai Maharaj's confinement in the Wada at Poona, and (*c*) use of force to Bala Maharaj in the same Wada. This in itself is a formidable list. But to make the thing complete we may as well state here that not content with a commitment on these charges, Mr. Aston had suggested to Government an investigation in certain other collateral charges arising out of the same transactions such as giving false information to the Police, cheating, unlawful assembly, riot, etc., etc.

The commitment was made on the 4th of April 1902 which may be taken as perhaps the darkest day that ever dawned for Mr. Tilak throughout his life, though his life has been one filled with events and vicissitudes. Just conceive a man of Mr. Tilak's position, standing before the world, which already contained a large number of prejudiced critics, a fair number of active and bitter opponents, and the whole world of officialdom as his sworn enemy,—conceive a man in these conditions judicially denounced by a District Judge as an obstinate, high-handed, unchivalrous and unscrupulous character whose hand did not stop even at perjuries and forgeries against a weak and defenceless girl in a high family who had not yet emerged out of her teens! Here was a man who was already convicted for sedition and violence, an offence, however, of a purely public character; but now was his turn come for the bottom being knocked out of him and for his being exposed to the world as a character as unworthy in private as it had been proved to be in public life!! The world wondered and stared and then blinked and stood aghast! Mr. Aston figured for the hour as a successful fisherman who had caught in his fine and far-reaching net the big truculent fish that had run riot in the waters of public life in scornful defiance of the efforts of the Police and

the other patient agencies of Government! Mr. Aston's was adjudged to be a thorough haul to the success of which, however, his legal acumen as a Judge and his skill as an investigator of facts were deemed to have contributed as much as his good fortune that comes but rarely! It is not every Civilian that gets such a golden opportunity, and Mr. Aston had apparently made the best of the one he had got! His interest in the case could be obviously only of a judicial character, and what possible end other than that of doing justice could he have in view in sitting as he did day after day late till the Court house had to be lit up with candle light, racking his brain and wearying his flesh even to the obvious neglect and even detriment of other work, Civil and Criminal, that had accumulated for disposal by him for about two months? Mr. Tilak himself was a lawyer and was represented by Pleader, and it must, it was naturally believed by many, evidently be put to the total want of a case for him that he could not put one before Mr. Aston. The gag that was applied to his mouth apparently came from the disclosure of hideous truth, and both the unsympathising and even sympathising world wondered whether and what sort of a defence Mr. Tilak might be able to make before the Magistrate! To a man of Mr. Tilak's education and position the hour must have indeed proved the darkest. But as will be shown later on the lamp of faith was burning bright within him and those few alone who knew the kind of faith he had in him could discern the faint and the distant silver lining with which even the heavy and the black clouds hanging over his head were relieved.

To resume the thread of our narrative, the City Magistrate did nothing with the case for some time as a special Magistrate was to be appointed for Mr. Tilak's

trial, and a Police investigation was to be held under the orders of the District Magistrate into all the cognisable and non-cognisable offences which he might have committed in all these transactions. As regards the Probate application, it remains to be stated that, while the proceedings thereon were going on before Mr. Aston, a motion was made before the High Court to transfer the case from him, on the ground *inter alia* that Mr. Aston was determined upon disposing the irrelevant question of adoption in these proceedings and that having granted personal interviews to Tai Maharaj, who had thrown herself on certain points, while he had refused to see the trustees, he was disqualified from trying the case. The High Court, however, did not grant Mr. Tilak's application, refusing to declare at that stage whether the evidence about adoption was relevant or irrelevant and to believe that there were sufficient grounds for the transfer of the case from Mr. Aston as he had taken no such personal interest in the case as disqualified him from trying it. The *rule nisi* issued in favour of the applicant was simply discharged by Candy and Fulton JJ. even without a written judgment; though it is instructive at this date to seé that had the High Court only exercised a sound discretion in the matter on the occasion and transferred the case, we might be as sure as anything that no other Judge would have committed the blunder of considering the whole of the mass of evidence relating to adoption, and that the present criminal proceedings would have been at least postponed till the right time, that is to say, the decision of the highest Court of Appeal in the adoption suit which was actually pending the Court of the 1st Class Subordinate Judge at Poona. But possibly the scandal of Mr. Aston's blundering and mischievous activity had not then been widely enough circulated, and

the High Court was evidently inclined to treat the matter in a light-hearted fashion, not dreaming of the eventful consequences which were to be entailed by the stitch not being applied in time. The refusal of Mr. Tilak's application by the High Court gave the proceedings a fresh lease of life and they then went merrily on without any chance of their headlong career being arrested.

The High Court referred Mr. Tilak for his objections to the regular appeal against Mr. Aston's judgment. The judgment, however, leaves the question of adoption severely alone as being absolutely irrelevant; and in fact whereas about 90 per cent. of Mr. Aston's judgment is taken up by the question of adoption and other absurdly irrelevant matters, the High Court Judgment, it may be remarked, does not even contain such a word as adoption throughout! So that a reader, who was not previously acquainted with the history of the case, could not possibly have formed, from the judgment alone, even a distant guess that Mr. Aston had ever anything at all to do with the question of adoption in the proceedings before him. The High Court decided that the Probate was not liable to revocation on any of the points of law or fact relied on by Mr. Aston, and that as for the non-submission of accounts and inventories Nagpurkar alone was responsible as being in the active management of the Trust estate. Mr. Aston's judgment in the Civil case being reversed, Mr. Tilak and his colleagues were once more restored to power as trustees and executors. But the motion to the High Court, made simultaneously with the Civil appeal, for a suspension of the criminal proceedings against him till the decision of the regular adoption suit pending in the Civil Court below not being successful there was nothing to stop the course of the prosecution.

By this time, however, the police inquiry conducted

by Mr. Brewin and Mr. Page of the Detective Department was completed. These two Officers had examined most of the persons connected with the transactions in question and it was generally believed that with that complete material before them the police authorities could not have reported favourably to the spirit of the prosecution. The Civilian enemies of Mr. Tilak, however, took up the matter where the Police left it; and the Prosecution was formally entered upon in all seriousness and an initial sum of no less than 30 thousand rupees was sanctioned therefore by Government. A Special Magistrate was appointed in the person of Mr. Clements, I.C.S. to whom the papers in the case were transferred on the 9th of September 1902. The Magistrate commenced on the 15th of September the trial on the first charge relating to the alleged complaint by Mr. Tilak. But on a preliminary point which, though not admitted by the Magistrate, was upheld by the High Court, the proceedings were stayed till the 23rd of September, and were formally cancelled the next day on the ground that a proper legal sanction was not given in the case. The alleged false complaint was originally made before the City Magistrate who, however, was never requested to give the sanction. It was only when, towards the conclusion of the Probate Proceedings, Mr. Aston's animus against Mr. Tilak reached its highest pitch that it at all occurred to the Judge himself that the alleged false complaint, which was withdrawn by Mr. Tilak on receiving satisfaction from Nagpurkar in the matter of the ornaments of the estate, might as well be pressed into service as one more stick to beat Mr. Tilak's back with; and Nagpurkar was actually abetted, if we may so use the word, to put in an application to the District Court for sanction which was of course given even before it was asked for. Mr. Aston

was in such a hurry as not to remember that he, sitting as a Civil Court, could not give sanction in a matter originally decided before a Magistrate; and that in order that such sanction might be given a Court had judicially to consider and determine, as a court responsible for the granting of sanction, whether any special reason warranted a departure from the ordinary practice of issuing notice to a party before the grant of sanction. In this case Nagpurkar of his own accord had never asked for a sanction nor was a notice issued to Mr. Tilak.

The preliminary conditions to the progress of a trial under 211 I. P. C. thus remaining unfulfilled, the High Court finally stayed the proceedings in the first charge where they were suggesting, however, that it was yet open to the Prosecution to take such steps as they may be advised in order to obtain the necessary sanction and revive the proceedings if they liked. To complete the account of this first charge we may anticipate the events a bit and say that the Prosecution of course were not slow to take up the suggestion. Nagpurkar was once more induced to take up the matter, and he put in a formal application to the City Magistrate on a formal offer of legal and other assistance in the task on behalf of Government. The City Magistrate also, who understood what all this meant, admitted the application, made a show of an inquiry and gave the sanction as expected on the 10th of November, 1902. Mr. Tilak promptly filed an appeal against this sanction in the Session Court during the brief leisure he could snatch from the trial on the 2nd charge running from day to day before Mr. Clement.s The Sessions Judge Mr. Beaman's judgment in appeal is a valuable document, and we might say that it gave the second fatal blow to the case against Mr. Tilak, the first blow coming from the High Court judg-

ment in the Probate matter. Mr. Beaman exposed and ridiculed the idea that he should be ever asked, as did the Prosecution Counsel in the case, to confirm the sanction simply as a matter of course, because such sanction was regarded only as a technical matter and because what Mr. Aston did must have been done on mature consideration and must be supported at all events.

He noted the fact that when Nagpurkar could not press the prosecution at his own expense the Crown found all the expenses for him and was thus enabled to emerge from his seclusion and agitate his grievances. As regards the merits of the case the Judge found that Nagpurkar was a salaried servant and agent for the estate and as such a responsible custodian of the valuable jewellery in dispute. It was his clear duty, therefore, to allow inspection of the ornaments when demanded by a majority of the trustees on pain of a lawful dismissal for suspected dishonesty and criminal misappropriation. There was neither anything illegal about nor any untruth in the complaint as actually lodged by Mr. Tilak. The Proseeution Counsel himself admitted that there was not a single untrue statement in the complaint! In the words of Mr. Beaman Mr. Tilak said to the Magistrate exactly what he had said to Nagpurkar himself. He said:—"Nagpurkar has been in possession of a great deal of valuable jewellery belonging to the estate; we have now dismissed him; we have called upon him to surrender the property and account for it; he declines; from his conduct and these circumstances I have strong reason to suspect that he has criminally misappropriated some of it, and I invoke your assistance as Magistrate to make him answer, to make him give an account of himself and his property." Mr. Tilak was perfectly candid with the Magistrate, and it was

for the Magistrate himself to grant or refuse process according to his own inferences. "Under such circumstances," Mr. Beaman observed, " I believe 99 men out of 100 would have done exactly what Tilak did, rushed off to the nearest Magistrate, stated the facts and asked for the assistance of the law." Nagpurkar himself never seriously felt aggrieved, but was obliged to come to the front simply because the proceedings in the first charge, which were initiated and persisted in, in spite of Mr. Tilak's protest, might not appear to have miserably collapsed. And consequently Nagpurkar was made to come on the scene nearly a year after the alleged false complaint was withdrawn. The concluding words of Mr. Beaman are as follows :—" As far as this proceeding goes, I do not see that Tilak has done anything for which he ought to be prosecuted under the authority of a Court or at which the person, who now pretends to seek the Court's authority for prosecuting him ever imagined himself to be aggrieved at all." Need we say that it is impossible to conceive a more severe indictment of the vindictive attitude of Government towards Mr. Tilak–an attitude which even made them as it were to supplicate or beg of Nagpurkar to allow them to use him as their agent of mischievous revenge?

Mr. Beaman's judgment had its effect, and Government wisely refrained from presenting an appeal against it and to court a more crushing rebuff! This was, however, reserved for Nagpurkar whose turn it was now to take upon himself to push the proceedings to their legal completion. He could collect money enough to engage a third rate Counsel in the Bombay bar! But to make sure of letting the High Court Judges know that he was the self-same Nagpurkar who had been used as a fa-

vourite tool by and was a recognised protege of the Bombay Government, he had the audacity to write letters to the High Court Judges, who constituted the Bench, asking for an adjournment on his own account and independently of the Counsel he had engaged. In that letter he candidly told their Lordships that he wanted an adjournment as "he was unable to find an able Counsel to represent him on account of the more efficient Counsel having been out of Bombay by reason of the summer vacation." The most amusing part of the whole affair was that this less efficient Counsel also had received a similar letter and all of them laughed together over the matter in Court. Mr. Branson who appeared for Mr. Tilak promptly asked their Lordships (Tyabaji and Russel JJ.) to mark the character of the man as shown by that letter and to take it into consideration in deciding the case. But their Lordships had no occasion for it. They relied on the admission of the Prosecution Counsel that every fact contained in Mr. Tilak's complaint against Nagpurkar was perfectly true; and they dismissed the appeal as groundless. Now the law point involved in all this was so clear that Mr. Tilak's Pleader, Mr. Khare, confidently argued it on the very first day of the trial on the first charge before Mr. Clements. But the latter unceremoniously brushed it aside saying that he had *already* considered the point, (even before it was raised, be it marked,) and would not even hear Mr. Khare thereon! And only after its technicality was admitted by the High Court and its merits considered and allowed by Mr. Beaman that the first charge was finally dropped!

But all this could not avail Mr. Tilak materially. For the charge so dropped was only one among seven—a pretty wide field for even an indifferent hunter to make sure of his quarry. The next charge in order, as stated

above, related to forgery, fabrication of false evidence and—charges—all of them more serious in their nature than that of perjury, and some of them at any rate exclusively triable by a Sessions Court with the aid of a Jury. On learning, however, that the last charge, that is to say, the charge of perjury would be given precedence over others, Mr. Tilak made a regular application to the Court to take up the more serious charges first, meaning, though not saying in so many words as he could not do in an application of that kind, that he thereby had flung in the face of the Prosecution a challenge which they might take up if they had courage enough to take the case to a jury instead of taking up a minor offence simply to give the special Magistrate appointed by Government jurisdiction in trying Mr. Tilak! The application was of course refused; and on the 27th of October 1902 Mr. Clements formally entered upon a trial of the charge of perjury which lasted him till the 24th of August 1903.

But before proceeding with this, which also proved the last charge, we may as well again anticipate the events a bit and relate the pitiful fate of the other five and more important charges. While the trial on the charge of perjury was going on, they were in a state of what might be called suspended animation, that is to say, they were set aside for the while to be brought forward and proceeded with according as the spite or conscience of Government were or were not satisfied in the trial for perjury. Supposing the charge of perjury had failed in an initial stage, supposing the case for the Prosecution had broken down notwithstanding the careful propping it was receiving from Mr. Clements, only as a custodian of public justice of course, there were five other charges for which Mr. Tilak could be put on his defence. They

were, therefore, never formally dropped. It occurred to the Chief Justice, however, at the conclusion of the hearing of Mr. Tilak's revisional application to inquire what had happened to those five charges. Probably the Advocate General thought that it was palpably absurd to say at that stage, in the face of Mr. Lucas' findings on facts and after the kind of appreciation of the law points and the evidence which the Chief Justice had shown, that all those more important charges were to be kept hanging on Mr. Tilak's head as a veritable sword of Damocles and, therefore, in answer to a suggestive query by the Chief Justice he formally assured the Court, to the intense relief of all concerned, that the charges were withdrawn!

Hereafter, therefore, we have to concern ourselves with only one charge, namely, that of perjury. But, as stated above, it spread over ten sentences grouped under three counts. As the trial advanced it soon became apparent, however, that the count as to the use of force to Bala Maharaj would not stand at all, and Mr. Strangman, the Prosecuting Counsel, withdrew it before the Court framed a formal charge. The counts as to false evidence about adoption and the wrongful confinement of Tai Maharaj remained, and after about 60 sittings, excluding the sittings occupied by the Commissions issued to the Aurangabad and Amraoti Magistrates, and after the pleading of Counsel which took more than a week, the case was decided on the 24th of August 1903 and resulted in Mr. Tilak's conviction on both the counts and a sentence of rigorous imprisonment for 18 months coupled with a fine of 1,000 rupees.

The Judgment is a lengthy one extending over more than sixty printed foolscap pages or about 250 folios in manuscript. The *Mahratta* was not able to give its

readers even a *precis* or selections from the judgment for fear that such selection itself might then be construed as silent comment, and, moreover, that it would be doing Mr. Clements himself an injustice to attempt anything like a summary of it, because the whole was so full of select argument and choice phrases! We might perhaps do the needful now without impropriety. Of course to state the thing in a nutshell we may say that there is in Mr. Clements' judgment not a single word in favour of anything connected with Mr. Tilak, while every attempt has been made to view his actions and motives uncharitably and to paint them as black as the Magistrate could in order that his conclusion might appear justifiable. On the other hand, every possible extenuation, every excuse right or wrong, has been found out or invented for Tai Maharaj and Nagpurkar in supporting everything they said and did and was apparently wrong. All the witnesses for the Prosecution were reliable and truthful; while not one of those on the side of the defence could aspire to that distinction! And on the top of it all, the Court, far from seeing any grievance arising to the accused in all this, only thought itself aggrieved, next to Tai Maharaj, by the conduct of Mr. Tilak, his able yet gentle pleader Mr. Karandikar, and even the Press reporters, all of whom had apparently conspired against the two aggrieved parties throughout the case, Tai Maharaj outside the Court, and the Magistrate himself inside it! The following extract from the opening portion of Mr. Clements' judgment will be found interesting from this novel point of view:--

"There are two points of an incidental kind on which I wish to record my opinion. They are first, the insinuations made in and out of Court on behalf of the accused that this prosecution is a vindictive one; and secondly,

as to the manner in which this case has been reported in the Press. As regards the first, I need only mention the edition of the 7th November last of the *Kal* newspaper and the remark made by Mr. Karandikar in Court on the 27th July and noted in the proceedings. I think it my duty to state that the evidence before Mr. Aston was overwhelming; and the important part consisted of documents and the accused's own admissions. The suggestion that Mr. Aston sanctioned the accused's prosecution for perjury, simply because he took Tai Maharaj's word against that of the accused, is a *suggestio falsi* of the most dishonest kind. If it had been found impossible to procure Tai Maharaj's attendance in this Court, the case against the accused, on the first and most important part of the charge, at any rate, would have lost none, or practically none, of its strength. It would still be absolutely convincing. (A statement which has been *now* found by the High Court to be absolutely unwarranted.) As regards the conduct of the case in this Court, it seems necessary to point out that the public Prosecutor or Mr. Strangman only represents the Crown, and that it was desirable in dealing with people who are not above making the most malicious insinuations, that the Crown should be so strongly represented as to render unnecessary any interference by the Court in the prosecution. As regards newspaper reports, it seems to me an anomaly that Courts and especially Criminal Courts have not been given the power to protect themselves against deliberate contempt, as in the edition of the *Kal* newspaper above noted, for carelessness and inaccuracy. During the examination of Tai Maharaj, the reports of two English papers admitted in Court that they did not understand Marathi, the language of the Court. They, therefore, did

not understand the questions or the answers; neither could they see the witness as she was screened from view. In spite of this, one paper that I noticed, printed columns of inaccurate reporting interspersed with notes on the witness's demeanour. This is a serious matter as it tends to discredit a witness in the eyes of the public."

As regards Mr. Tilak himself, Mr. Clement's views are summarised in his reasons for the sentence, and are as follows:—

"For the offence of which the accused has been found guilty, the punishment may extend to seven years imprisonment as well as fine. In estimating the punishment to be awarded the intention must be taken into account. Now the accused's intention was primarily (as far as the first portion of the charge is concerned) to secure the continuance of the management of the Estate by the Trustees, as guardians of Jagannath. Management by the Trustees meant, for all practical purposes, management by the accused and Khaparde. The question arises—did they seek any personal profit to themselves in this? There seems to be evidence and reasons sufficient to raise suspicion, but not enough to preclude reasonable doubt. On page 110 of his deposition, the accused states: 'There has been loss to the Estate since the deceased died. I don't mean damage. The Estate has suffered. I mean that there has not been so much benefit as we expected. I mean it could have been managed better. The statement of account I filed in suit No. 358 shows that the liabilities of the Estate increased by about Rs. 15,000, so that there was such an increase in liabilities (Note by Mr. Aston. It took ten minutes questioning witness before this was admitted by him). There is also about 14,000. Rs. missing out of money

borrowed by the Trustees, as I have already admitted, (All this is now proved to be bosh. *Vide* Mr. Lucas' judgment.) His statement on page 13 shows that he is not prepared to hold Nagpurkar responsible for this. He never ascertained how this missing amount had been spent. Considering his animus towards Nagpurkar, he would have ascertained it at once if Nagpurkar had been to blame. I have now to consider the accused's plea that all he did was for the good of the Estate.' This is an empty phrase. Men do not plot for the benefit of an abstract idea of this kind. The accused's conduct shows that it was not Tai Maharaj's welfare that he had in view. It could not have been that of Jagannath, the son of a foolish Thasildar of Nidhone. What was the result of the accused's conduct? (Or rather, Mr. Aston's conduct in granting interview to Tai Maharaj and refusing all hearing to the trustees? *Ed. M.*) Simply to involve the Estate in litigation. His obstinacy and perseverance must also be noted. After he and his followers in August had been refused admission to the Wada, he set up an Estate office of his own and collected revenue belonging to the Estate. He had previously abstracted from the Wada the accounts, etc., necessary for this purpose. He then made several attempts by invoking the aid of the City Magistrate and Police on various pretexts to obtain possession of the Estate records and jewellery. All this is proved by his own admissions. (Pages 80, 93 to 98) I think the accused may be given the benefit of what doubt there may be regarding his intentions. The only alternative is to regard these acts, and the act of perjury of which he has been found guilty, at the demented acts of an obstinate man who had been completely defeated by people whom he apparently made the mistake of despising. His original motive in

working for the adoption of Jagannath may have been compounded of feelings of jealousy towards Nagpurkar, wounded self-esteem, and a desire to continue in his position of power with regard to the Estate. He was evidently egged on by Khaparde in every step he took. The latter discreetly removed himself, when, on two occasions, the situation gave signs of becoming dangerous and feeling safe in the witness box in Amraoti, showed his disposition by telling false-hood freely, and making a cowardly insinuation against Tai Maharaj's character. I do not think the fact that Khaparde has abetted the accused can make any difference to my estimate of the latter's intentions."

We have extracted these somewhat longish passages not because they are a certificate of character to Mr. Tilak, who of course never cared how he was judged by the Magistrate but because they amply make it clear in whaspirit the Magistrate approached the case so far as the accused was concerned. As strong instances of the prejudice which had warped the mind of the Magistrate against Mr. Tilak and consequently in favour of every one who was against him or instrumental to his ruin, the following facts may further be cited. He has taken into account not only Tai Maharaj's credibility but her character as well. To him it was evident that Tai Maharaj had shown great strength of character throughout, and that, as contrasted with her, "a weaker or more vacillating person than Nagpurkar could hardly be conceived." Her letters did not betray any weakness of mind. Her tenacity was remarkable. He regarded Tai Maharaj as a truthful witness, "as witnesses in this case went," though she had not spoken the truth in every detail. She was very mindful of her dignity and it might be put to her ill-treatment, in which the chivalrous Magistrate all along

sympathised, that she sometimes did not tell the truth. Her cross-examination was, in the Magistrate's opinion, conducted on the most unfair lines, the unfairness lying only in the fact that Mr. Karandikar addressed her as *tumhi* instead of *apana*, (even when the use of the word *apana* which applies to all three pronouns equally and was thus a source of confusion when two different pronouns were to be used in one sentence.) Mr. Branson assumed his sternest manner, the Magistrate complained, and made, the witness uncomfortable by compelling her to admit that she freely invented parts of letters shown to her, that is to say, told falsehoods to the parties to whom the letters were addressed; that she had to tell untruths in her examination to save discomfort to her arising out of self-contradictions and that she denied things which she ought to have admitted simply as a caprice as she probably did not want to be bothered with a string of questions !!! As for Nagpurkar, he was of course weak and vacillating; but the Magistrate carefully refrains from calling him an untruthful witness. For, on the Prosecution side, he is the trump card only next in importance to Tai Maharaj. In one instance, however, Nagpurkar happened beyond doubt to have told a deliberate and a patent lie. He roundly asserted that on particular days his nephew did not attend his school in order to prove that Tai Maharaj was kept under confinement in the Wada. But Mr. Tilak gave him the most effective contradiction possible, namely, by the Municipal School registers which showed that the boy did attend the school on those days.

But even in such a dilemma Mr. Clements could venture to go to Nagpurkar's rescue, and he rescues the witness out of the mire of perjury by the following splendid piece of sophistry. Says the Magistrate:—"One

can hardly conceive Nagpurkar bolstering up a strong case with a piece of evidence which it was perfectly easy to refuse. He may have forgotten, he may have been trying to introduce a discrepancy ! I am not at all inclined to think that he wishes that the accused should be convicted !!" "Nagpurkar may have forgotten" is perhaps so far so good. But that he, the arch-fiend in all this drama, should be held to be wishing that Mr. Tilak should *not* be convicted and should risk to himself a prosecution for perjury by deliberately *introducing a discrepancy* (mark, gentle readers, it is not *telling a falsehood*) in order presumably to weaken the effect of the evidence against Mr. Tilak passes beyond all comprehension. So much for the candour and veracity of this Englishman-judge who by way of generally commenting on the evidence in the case sets up the candour and veracity of Englishmen as a model to imitate and a standard to judge by ! ! As for Mr. Clements' grasp of things seen and unseen and his tenacity of prejudice, it will be enough to point out that with regard to the alleged false complaint by Mr. Tilak which was admitted by the Prosecution Counsel and held by the Sessions Court to be truth and candour itself in every detail, Mr. Clements is not at all satisfied that it was not a false complaint, though, it may be remembered, the matter was not before him and he had no occasion to express an opinion upon it. And he speaks of the complaint as follows :—"I use the word false in reference to this complaint advisedly, because I consider that it was a false complaint. Mr. Aston also held the same view. I have not seen the proceedings in the matter of sanction given by the City Magistrate, but there are reasons for believing that the whole of the evidence on the point was not before the Courts concerned." It is bootless to ask what

was there to prevent "the whole of the evidence on the point being before the Courts concerned" and to bring it all only before Mr. Clements' Court? The Magistrate says he has reasons for believing the complaint to be false without giving them. Well, there are not wanting reasons to believe anything; and we have reasons for believing the Magistrate to be—to be—well, what we do not choose to express!

We think we need not multiply either facts or comments any further to show that Mr. Clements was personally prejudiced against Mr. Tilak. And we may dismiss this topic with the simple remark that whereas Mr. Clements holds Mr. Tilak to be demented by obstinacy, dementation may as well result from prejudice when carried too far, and that this latter kind of dementation has only a greater chance of being emphasised when a man pretends to sit in judgment in a judicial inquiry and helplessly surrenders his reason and judicial instinct to his personal prejudice! The judgment and the sentence were both fairly expected from the manner in which the Magistrate had betrayed his prejudice throughout the trial. They caused pain; but not surprise. Mr. Clements had kept a warrant ready for the Police and he refused to interfere in their descretion which was evidently to result in Mr. Tilak's removal to jail without being allowed a sufficient time to give instructions for lodging the appeal by his pleaders on the spot. All this, however, was anticipated so that the appeal memo was drawn almost completely at home by Mr. Tilak himself and his pleaders who knew what to expect in that day's judgment. Mr. Tilak was removed to the jail immediately after, even to the surprise of the Sessions Judge himself who, while admitting the appeal and ordering his release on bail almost without any

arguments from Mr. Khare, openly expressed his surprise at and disapproval of the indecent haste shown in the execution of the jail warrant. But Mr. Clements did not stop here; for notwithstanding the usual order of the suspension of sentence pending appeal he insisted on recovering the fine by restraint. That was the last act of kindness of this judicial hunter to his victim!

For once Mr. Tilak was released on bail by the Sessions Court's order; he was entirely in other, and what since happily proved, better hands. After the lapse of more than two months, necessitated by the printing of the voluminous record under the order of the Sessions Court, the hearing of the appeal was commenced on the 26th of October. Mr. Lucas was clear, courteous and sympathetic throughout, so much so that the confirmation of sentence by him was as much unexpected as the sentence itself by the Magistrate was expected; and the disappointment of expectations was made deeper and emphasised by his uniformly just and favourable findings on all, excepting one or two which happened to be the most important, points of fact. He held that most of the assertions of Tai Maharaj and her witnesses, made by way of raising a structure of improbabilities against Mr. Tilak's assertion of the fact of adoption, were disproved.

Thus, for instance, he held that Baba Maharaj did not express any death-bed wish as to a boy being adopted only from the Kolhapur family, that his will did contemplate the adoption of a minor, precisely the thing done by Mr. Tilak in the interest of the estate; that a long minority under judicious management was obviously of the greatest advantage to the estate; that Mr. Tilak and Mr. Khaparde had no interested motives such as desire for pecuniary benefits or even love of power, as admitted

by Tai Maharaj herself but not conceded by the Magistrate; that Tai Maharaj was being guided by Nagpurkar who was the most unscrupulous and scheming person that was ranged on the side of Bala Maharaj but who had not the courage to openly oppose the trustees from the beginning and sought, in conspiracy with Pandit Maharaj, to accomplish in secret what he could not achieve openly; that the principal resolution of the trustees by which the Aurangabad adoption was decided upon was not tainted by deceit as the Magistrate held; that Tai Maharaj willingly went to Aurangabad at least to select a boy and was not at all under restraint there as falsely told by her; that Mr. Tilak intended from the very beginning to do all that was necessary for a valid adoption being completed as soon as a suitable boy became available; that certain letters purporting to have been written by Tai Maharaj and put in the case were not genuine but fabricated; that there was apparently no fabrication or forgery of any kind committed by Mr. Tilak; that both Tai Maharaj and Nagpurkar gave false evidence against Mr. Tilak; and that there was no confinement of Tai Maharaj in her wada at Poona. Mr. Lucas, however, *assumed*, it is difficult to say on what reason or on what grounds, that Mr. Tilak had told a falsehood in the matter of the actual fact of the adoption and he, therefore, believed that Tai Maharaj must naturally have wished the adoption to take place at Poona and also on the same assumption, made much of the omission in some of the papers that passed through Mr. Tilak's hand, of the detailed facts of adoption in particular words. He had on the whole taken a very mild and sympathetic view of the case, and it is difficult to conjecture what could have led him to decide the case in a way patently inconsistent

with legal acumen or sound appreciation of probabilities. He, however, justly made much of the extenuating circumstances in the case, and though holding Mr. Tilak to be guilty of making a single false statement, he apparently put it to the account of the human proneness to temptation in weak moments that is sometimes found in even remarkably strong and obstinate characters though actuated by positively virtuous motives; and he reduced the sentence to one of six months' imprisonment and fine as before. The work of success in a revisional application against the Sessions Court judgment was thus rendered both difficult and easy at the same time; difficult because there were apparently two judgments against Mr. Tilak, but easy because the net result of these two judgments was that most of the irrevocable findings of fact were wholly in Mr. Tilak's favour, and the only adverse finding that remained was, in consequence, rendered top-heavy and altogether insupportable. The admission of the revisional application on legal grounds by the High Court was, therefore, in itself a ground for hopefulness, and it was reserved for the High Court to complete the work of vindicating truth and justice in the case and to restore to Mr. Tilak his jeopardised honour in the fullest measure.

The judgment of the High Court is for all practical purposes a judgment on the adoption suit itself. For the party of Tai Maharaj, having fallen to the temptation of using Mr. Aston to the fullest extent possible had sown the wind by getting Mr. Tilak to be committed on a charge relating to the factum itself of adoption, and they must thank themselves for having to reap the whirlwind in having the adoption itself being pronounced upon by the High Court. The crash of course came late, but it was complete when it did come; and the conspira-

tors against Mr. Tilak will now find that they had really dug the grave for themselves though meant by them for Mr. Tilak. It was of course extraordinary that an adoption should be decided like this in a criminal case, but it was made inevitable by Mr. Aston for the good of Tai Maharaj and for the ruin of Mr. Tilak. But Mr. Aston will now find himself hoisted with his own petard! The High Court dealt with the documentary evidence thoroughly in detail and as for the oral evidence, though they have refrained from interfering with the conscious appreciation of it by Mr. Lucas, yet they have touched it so as to complete Mr. Lucas' work in favour of Mr. Tilak. Mr. Lucas, it may be remembered, had affected to disbelieve all oral evidence on either side on the charmingly simple but unjudicial plea that natives in India tell lies by preference. In maintaining the sweeping grace of this deliciously self-complacent generalisation Mr. Lucas had of course to disregard the large body of direct testimony to the fact of adoption given by a batch of about nine respectable Aurangabad witnesses on the side of Mr. Tilak. The High Court practically censures Mr. Lucas' judgment on this point. The Chief Justice says that he finds in Mr. Lucas' judgment no attempt at sifting the large body of Aurangabad evidence, and that, had it been necessary, he would have been prepared to hold that the absence of any discussion of this evidence itself constituted such a grave omission that on that ground alone the High Court would be bound to interfere! Mr. Lucas' legal acumen also has been found fault with in the matter of adverse inferences drawn against Mr. Tilak from the mere fact of alleged omissions of specific words about adoption, so much so that the High Court hold Mr. Lucas' judgment on this point to be "*antagonistic to the first principles of Criminal Jurisprudence.*"

The above summary will, it is hoped, give our readers a connected idea of the whole labrynthine proceedings, civil and criminal, original, appellate and miscellaneous mixed together in a terribly hopeless confusion, through which Mr. Tilak had to find out his way. And when one pauses at the High Court Judgment and looks back upon the whole scene, what an agreeable contrast meets his eyes! On the 4th of April 1902 Mr. Tilak stands actually charged with seven distinct or alternative offences one of which again contained three minor counts, and openly suspected and impliedly charged with three or four others. The formulation, therefore, of a dozen criminal charges, some of them very heinous in their nature, appeared in itself a terrible indictment out of which it would have seemed almost hoping against hope to escape. And now on the 4th of March at the other end, we find all these charges to have melted away in the seething judicial furnace, so that not a single trace of them is to be found on record, and Mr. Tilak's veracity and character emphatically proved by a strong and clear judgment of the highest tribunal of justice in this Presidency. The result no doubt is agreeable and happy in the extreme. But may we not just ask the thinking public to consider the world of bother and anguish which Mr. Tilak must have had to suffer in this fiery process? To give our readers some idea in this matter we may as well give a few details. The diary* of the Tilak Case prepared from Court papers will show at a glance over what a wide space of time Mr. Tilak's labours in the cause of the trust estate are spread, and how in particular the period between May 1901 and March 1904 is filled up. Our calculation shows that in all these proceedings for about 160 sittings Mr. Tilak had to appear in Court

* See page 111.

and for the most of these days in person. Out of these 160 days, (more than 90 p. c. being of five hours each) the Probate proceedings before Mr. Aston took 33 days and the abortive charge for false complaint took 8 days including appeal, etc. The charge of perjury took 96 days up to the High Court decision including the commissions which took about 24 sittings, and about 20 sittings were taken up by miscellaneous motions or applications. Mr. Tilak's deposition extended over 15 days of five hours each and Mr. Khaparde was examined for about 7 days. Nagpurkar nearly took the same time, and also Tai Maharaj, though she was examined only off and on so as to meet her convenience, comfort and preparation. Of course having stated the actual number of hearings in Court we may leave our readers to guess for themselves how many additional days may have to be allowed Mr. Tilak to prepare the case, instruct his pleaders, write out arguments, arrange his evidence, and personally travel to and from Bombay, Amraoti and Aurangabad. For, it may be remembered that Mr. Tilak was his own attorney throughout! The question of cost is even more imposing than that of time. It is believed that Government themselves had to spend about Sixty thousand rupees in all these proceedings and about twenty five thousand rupees may be taken as the most moderate estimate of the expenses which Mr. Tilak had to incur! It would be interesting also to know that about Rs. 2,000 had to be spent by Government and by Mr. Tilak each, only for obtaining certified copies of Court papers, exclusive of the printing charges, etc. All these details, we think, amply speak for themselves and comment would be superfluous! We only ask our readers to remember that all this physical bother, brain work, and mental anguish was necessitated by the inquiry

into the only fact, whether Mr. Tilak spoke controvertible or unimpeachable truth in making certain statements on a compulsory oath and in reply to peremptory questions put by Mr. Aston on matters which Mr. Tilak strenuously protested were absolutely irrelevant and were upheld to be so by the higher authorities throughout. We say, therefore, that the trial was only a legal phrase for a deliberate persecution planned and insisted upon by certain unscrupulous officers of Government who were selling for the salaries they received the vinegar of personal spite or prejudice in the name of the good wine of Justice!

And yet such is the constitution of the established Government here that a tangible enforcement of the responsibility for all this mischievous blundering may in vain be cried for! A Government, it is said, has 'no body to be kicked and no soul to be damned.' and the immunity in this respect enjoyed by the Government is also extended by law to its individual officers. But will not the public voice demand in this case that an attempt ought to be made to localise as far as possible the responsibility for all this egregious blundering? One fact is patent throughout. The present was not a prosecution but a persecution, and it is equally clear, again, that it was not a Police persecution as is most often the case, but a Civilian persecution. Civilians, we admit, are not generally in evidence as deliberately vitiating the fountains of justice simply in order that an individual here or an individual there may be harassed or persecuted. But evidently the present case stands by itself in all its bearings, and the game was regarded perhaps as too big for the police hounds. But the judgments of the Sessions and the High Courts taken together conclusively show that the particular

Civilians who either instigated or carried out, so far as they could, this monstrous and at the same time mean act of persecution, had on their side neither the necessary skill and legal acumen nor the saving grace of common sense. The only thing they possessed in an eminent degree was an unscrupulousness to abuse their authority and an amount of brass that saved them shame-facedness when a conscious abuse of such authority was openly brought home to them.

We know we are using strong language; but we use it because we are perfectly convinced that the game of persecution in this case was a deliberate one and because, as the world now knows, even judicial officers assisted it by committing stupidly unjudicial acts, gross and palpable enough to preclude any charitable assumption of unmindfulness on their part as to what they were doing. We use such language, again because we are not here dealing with any passing or ordinary instance of that natural or inevitable failure or disregard of justice which often takes place as the result of the grinding of our judicial grist-mills, in which hundreds and hundreds of parties and litigants are every day being thrown in at one end as their grit and come out at the other end more or less ill-shaped, pounded or pulped as the result of unintelligent though automatic working of the judicial wheels, bolts and levers in them. But we are here dealing with a case, in which a District Judge had taken such an excesssively personal interest therein as to leave his personal honour at stake as the only possible alternative for the ruin of Mr. Tilak's career, in which the State had chosen to back this erratic District Judge in his obviously perilous adventure and so made his honour their own, in which counsels of caution and common sense were scornfully set aside and thousands

of rupees from the public purse were set apart for the accomplishment of the devilish purpose. And it only stands to reason that the discredit of failure and the poignance of public censure must be in proportion to the amount of the animus and the preparation. The disproportion between the end and the means in this case has been very glaring. By securing the conviction of Mr. Tilak, Government might get rid of one who has always been an eyesore to them; but this gain could never have been claimed as direct or legitimate. The only thing they could have legitimately claimed is that one perjurer was brought to book. But the offence of technical perjury is only so common in the Law Courts not only of this but every other country as well. Even in the present trial for perjury, according to Mr. Lucas, most of the oral evidence on either side is unreliable, which means false, if we may not mince matters. To give only specific instances, however the two Nagpurkars, Ranade and Omkar, are declared to have given unreliable evidence, and we should like to see how many of these are finally hauled up before the Court to answer a charge of perjury. If prosecutions for perjury must really and always be taken up by Government in the same spirit as they took up the one against Mr. Tilak, then there would be every year at least twice as many perjury cases as there are Civil and Criminal cases put together in that year.

But again the following extraordinary and aggravating features may be remembered in connection with the particular case of Mr. Tilak:—1. The alleged false statements were made in Mr. Tilak's cross-examination by the party who called him as its own witness. 2. They related to absolutely irrelevant matters. 3. There was no examination of Mr. Tilak on those matters by his own

pleader as they were irrelevant. 4. The statements covered issues which were pending a decision in the Civil Court, the papers of which were all called up by Mr. Aston and Criminal litigation subsequently begun thereon, the Civil suit remaining on the *sine die* file for about two and a half years for want of papers to go upon. 5. The Police had reported that the facts, on the non-happening of which the success of the prosecution for perjury turned, had actually taken place and there was no chance of conviction. 6. Mr. Tilak's alleged perjury did not consist of two self contradictory statements, but statements which had to be proved by adducing evidence to show that certain events had not happened. It will be thus seen that Mr. Tilak was prosecuted certainly not because he had committed an offence which so many persons are committing every day but are not proceeded with. In prosecuting him therefore, Government were seeking the fulfilment of an indirect motive of their own.

They were also practically doing something else; they were fighting the battles of Tai Maharaj on the ground of adoption. It was an evil combination of official animus and a woman's self-interest; and we for one cannot decide what was the real fact, namely, whether Tai Maharaj was a tool in the hands of Government or Government were a tool in her hands! The probability is that each of them used and was actually used in his turn as a tool by the other to a certain extent, though it is to be pitied that in all this the Government so far forgot their dignity as to debase and put themselves on the mean level of an illiterate, selfish and misguided young widow! All this takes the public interest in the case far beyond the personality of Mr. Tilak though he was no doubt the central figure therein. The grievances from

which he personally suffered in the case are obviously too many to be mentioned. For it is well known that practically every finding of fact by Mr. Clements in his judgment and almost every order on every application put in his court for the defence during the trial was unjust and constituted a separate grievance. To speak of the proceedings before Mr. Aston is now superfluous. The whole inquisition constituted a colossal grievance the like of which perhaps no litigant or witness had suffered ever before in the annals of the British administration of justice in India. And here again we believe that there is not a word of exaggeration in this; and we may as well challenge any one who holds otherwise to point out any instance he may know which can be compared with the present one in point of the waste of time, trouble and money, and of the high character that was at stake. But apart from all of Mr. Tilak's grievances arising out of legal acts, there is one other grievance which few except the parties concerned can realise. And it lies in the personal results which Mr. Tilak had to bear throughout these proceedings in the contemptuous atmosphere of the Court house, where he as being the accused could not assert himself. We desire to take this opportunity however, to record our sense of thankful appreciation of the uniform courtesy which Mr. Tilak received at the hands of Mr. Lucas. In fact he was so courteous that he had almost disarmed criticism even upon his adverse judgment though manifestly vitiated by the want of legal acumen and marked by the glaring misappreciation of a few central facts in the case. Mr. Aston and Mr. Celments, however, were scorn and contempt itself in their attitude towards Mr. Tilak, and it is for the public to judge how his days in the proceedings before these

two judges must have proved a hard discipline never known before. The shilly-shallying which the High Court did in the initial stages of the case constituted also a grievance to Mr. Tilak. If only they had raised their finger at the right time they could have saved him a whole world of trouble and expense, and what was expected of them was quite in keeping with precedents of law and the dictates of common sense. One more of Mr. Tilak's grievances remains to be mentioned, and it consists in the immense start which untruth and calumny got over him who was handicapped by the fact that it was neither necessary nor safe for him to have entered into the question of adoption before Mr. Aston, as the Judge was sure to have badly manipulated Mr. Tilak's evidence in his own patent unjudicial way and as it would have been for Mr. Tilak the entering on his defence before a criminal case was made out against him. The start which calumny and untruth got in this case was by about a year and a half or we may say 2½ years counting up to the final High Court judgment in the case. And it can easily be imagined what havoc the leader in the race must have made in the field of public sympathy with Mr. Tilak for while all of his sympathetic friends could not have the same full legal insight necessary for a proper appreciation of his position, there were not a few others who would gladly turn the opportunity to account for advancing their mission of misrepresentation of Mr. Tilak's actions and motives.

Happily the race has now been won notwithstanding the handicap. How Mr. Tilak behaved during all these troubles; how he could not only keep the serenity of his mind so as to pursue his ordinary avocations without detriment; how even in his darkest hours when expressions of hope from others were only likely to have

sounded as hollow mockeries and premature consolations, he not only maintained cheerfulness enough for himself and to spare for others and proved a source of intellectual inspiration to his own legal advisers and pleaders; and how he could command isolation of mind even from his deep-rooted and worrying anxieties, only intensified by the death of his eldest son, in order to pursue his favourite literary studies and even to issue his book "the Arctic Home in the Vedas' out of the press after his commitment by Mr. Aston—these are all matters on which perhaps it is not for us to dwell at any length. But we can not help referring to them if only in passing in this our hour of most sincere jubilation, because it would be doing a cruel injustice to our personal feelings to pass these matters over altogether. We need hardly say that partisanship is neither a crime nor a legal estoppel! And the present writer may well hope to be pardoned by the public, for in referring to these matters he does only what most of them are themselves doing just at this moment, namely, freely expressing their feelings of the moment for Mr. Tilak, and the writer cannot see why he of all men should be deprived of his pleasure simply because of the kind of identity that exists between himself and Mr. Tilak. He hopes also to be pardoned by Mr. Tilak himself, though it is perhaps the first act relating to him done by the present writer during the last two years and a half to which his power of attorney does not extend.

It is also at this moment pleasant to recall the comments made by some of the Anglo-Indian papers when Mr. Tilak's conviction by Mr. Clements was announced. The *Pioneer*, for instance, had remarked that Mr. Tilak's conviction for sedition did not matter at all as involving no moral turpitude. The *Pioneer* recognised Mr. Tilak's

learning and scholarship as evidenced by his latest book, but it only regretted that the ways pursued by such a man should lead to criminal courts. The *Pioneer*, if it will now care to read the High Court's judgment patiently, will have no difficulty in understanding who it is owing to that Mr. Tilak's ways led to the Criminal Court. And it will have no difficulty in scoring away all previous accounts with Mr. Tilak and taking him up as a clean slate for a fairminded criticism of his in future.

But full of personal grievances though the case has been to Mr. Tilak we do not intend to give the personal element therein more than its due importance. While writing about Mr. Tilak's troubles in 1897 the present writer had remarked that our regrets or our tears at Mr. Tilak not always getting his due avail not. Worship at the shrines of the Government and the people at the same time is incompatible, and men who work after a true ideal have thus to find themselves between two divergent blades as of a pair of scissors to be clipped whenever the divergence may come to a point. In this state of things the only safe man is he who sits with folded arms. But as every body now knows, it is not in Mr. Tilak's nature to sit with folded arms whether you call it a good or bad point in him. And consequently the renewal of hostile attentions from the officialdom cannot cause surprise. But as we have pointed out above there are considerations in the present case which must carry public interest therein much farther than Mr. Tilak's personality, and if we have given so many details relating to this case and at such length it is only because the public might be enabled to consider and appreciate the case from every possible point of view. The lessons, again, which a case of this kind has to convey to essentially public men are patent; and no one need now be

told how even a conspicuously successful public career is often an ineffective guarantee for public men against the dangerous play of motives of private opponents who though despicable in themselves may be emboldened to say or do anything against such men simply because that is supposed to lead to Government favour and attention however 'temporary and fitful they may be. But this is no place to moralise, and more important than the lesson even to public men is the point of view which the case suggests for looking at what is called the administration of public justice in the land.

A DIARY OF THE TILAK CASES

1897

DATE		EVENT
23rd July	...	Mr. Tilak arrested.
5th ,,	...	,, released on bail in the Sedition Case.
6th ,,	...	comes to Poona.
7th ,,	...	Baba Maharaj died.
14th September	...	Mr. Tilak convicted for sedition at Bombay

1898

9th February	...	Mr. Tilak consulted in Jail about the estate affairs.
16th ,,	...	Probate taken for Mr. Tilak and other executors.
6th September	...	Mr. Tilak released from Jail.
23rd October	...	Mr. Tilak attends Trustee's meeting.

1899

May	...	Mr. Tilak attends second Trustee's meeting at Vithalwadi about adoption.

1900

Nothing of importance to be noted in this year.

1901

22-29th May	...	Budget and adoption meetings of Trustees and Tai Maharaj at Singhgad.
18th June	...	Trustee's Meeting at Poona when Aurangabad adoption resolved upon. Mr. Tilak writes confidentially to the Kolhapur Diwan for permission for adoption.
19th ,,	...	Mr. Tilak, Mr. Khaparde and Tai Maharaj start for Aurangabad.
20-28th ,,	...	Party stays at Aurangabad with Mr. Tilak.
22-23rd ,,	...	Pundit Maharaj and Nagpurkar conspire together.
27th ,,	...	Oral gift and acceptance of boy Jagannath by Tai M. and Shastris' certificate for the same.
28th ,,	...	Corporeal gift and acceptance of boy Jagannath on the lap of Tai Maharaj. Party leaves for Poona.
29-30th ,,	...	Party reaches Poona and letters to Mr. Aston and Trustees and boy's father by Tai Maharaj mentioning adoption.
29th June	...	Pundit Maharaja's conspiracy develepes.
5th July	...	Mr. Tilak discovers the plot against the Aurangabad adoption and reports Nagpurkar to the Trustees.
6th ,,	...	Tai Maharaj visits Mr. Aston through Mrs. Aston and throws herself on his mercy.

7th	,,	... Tai Maharaj on advice gives notice to the trustees not to interfere with the estate.
10th	,,	... Tai Maharaj writes a Yadi to Kolhapur Durbar to get sanction for Bala Maharaja's adoption.
11th	,,	... Mr. Tilak files a suit for injunction against Tai Maharaj and Bala Maharaj against his proposed adoption by her.
11-13th	,,	... Mr. Tilak sends telegrams and letters to the Kolhapur Durbar officially warning against permission being given for Bala Maharaja's adoption. Tilak also writes in detail to Mr. Aston about adoption.
12-13th	,,	... Tai Maharj's first attempt to adopt Bala Maharaj at Poona frustrated by Mr. Tilak. Telegrams accordingly sent to other trustees.
15th	,,	... Tai Maharaja's second attempt at adoption of Bala Maharaj frustrated by Messrs. Tilak and Khaparde, and Bala Maharaj and party went out of the wada.
15-20th	,,	... Consultation between Mr. Tilak, Mr. Khaparde, Tai Maharaj, Nagpurkar and other trustees and Durge Shastri with doors closed for some time during day.
16th	,,	... Pandit Maharaj's complaint to the Police thrown out.
18th	,,	... Pandit Maharaj visits and complains to Mr. Aston.

20th „ ... Mr. Aston's officers visit Tai Maharaj in the wada.

21st „ ... Mr. Tilak files a complaint for breach of trust against Nagpurkar to recover and inspect the estate jewellry.

22nd „ ... Tai Maharaj again visits Mr. Aston.

29th „ ... Tai Maharaj files the application for revocation of probate.

3-7th August. ... Tai Maharaj drives out Trustees' clerks and shuts herself up in the Wada. Police visits to the wada for inquiry into probable rioting in the wada.

15-19th „ ... Mr. Tilak at Kolhapur visits the Maharaja.

19th „ ... Tai Maharaj adopts Bala Maharaj at Kolhapur.

23rd September... Mr. Tilak files the original adoption suit against Tai M., Bala Maharaj and for confirmation of Jagannath's adoption.

16th, 19th, 20th, 21st, 22nd, 23rd, 27th, 28th, 29th, November and 3rd, 4th, 5th, 6th, 7th, 10th December 1901 3rd April 1902. ... Mr. Tilak cross-examined by Mr. Aston and Tai Maharaja's pleader.

1902

6th January ... Mr. Tilak applies to the High Court for transfer of the Probate application to some other Court.

Date unknown	...	High Court Fulton and Candy J. J. reject Mr. Tilak's application for transfer.
3rd April	...	Mr. Aston revokes the Probate.
4th ,,	...	Inquiry and commitment of Mr. Tilak to the Magistrate.
17th ,,	...	Mr. Tilak files an appeal to the High Court against Mr. Aston's order of revocation.
April and May	...	Police inquiry into charges against Mr. Tilak.
19th August	...	High Court (Crowe and Batty J. J.) reverse Mr. Aston's order of revocation.
9th September	...	Mr. Carvalho transfers the case to Mr. Clements.
15th ,,	...	1st charge (of false complaint against Mr. Tilak's taken up by Special Magistrate Mr. Clements.
16th September	...	Mr. Tilak files in the High Court (Jenkins C. J. and Batty J.), an application for stay of proceeding in Mr. Clements' Court for want of proper sanction.
16th to 23rd ,,	...	Proceedings stayed by order of the High Court.
24th ,,	...	Proceedings before Mr. Clements formally cancelled for want of proper sanction.
29th ,,	...	Mr. Tilak's motion to the High Court for stay of proceedings before Mr. Clements on the ground of illegal transfer of the case from Mr. Carvalho to Mr. Clements.

8th October	...	High Court (Jenkins C. J. and Batty J.) refused Mr. Tilak's application holding the case was rightly transferred though orally without notice to parties.
23rd „	...	Case formally begins in Mr. Clements' Court.
23rd to 27th „	...	Application by Mr. Tilak to Magistrate for taking up charges of forgery, etc. in order of commitment.
27th Oct. 1902 to 24th August '03		Hearing of the charge of perjury before Mr. Clements including the two Commissions at Aurangabad and Amroati.
4th November	...	Nagpurkar applies to Magistrate Mr. Carvalho for Mr. Tilak's prosecution under 211 I. P. C.
6th to 10th „	...	Proceedings before Carvalho, sanction given.
17th „	...	Mr. Tilak files an appeal before Mr. Beaman, Sessions Judge, against Mr. Carvalho's order of sanction.
19th, 20th Dec.	...	Proceeding in appeal before Mr. Beaman. Quashed sanction.

1903

16th May	...	Nagpurkar's appeal against Mr. Beaman's Judgment dismissed by the High Court (Baddrudin Tayabji and Russel J. J.)
24th August.	...	Sentence and conviction of Mr. Tilak by Mr. Clements. Appeal to the Sessions Court lodged. Mr. Tilak

	taken to Yeravda Jail and brought back.
22nd September.	Mr. Tilak applies to the District Magistrate against illegal recovery of the fine by Mr. Clements.
26th Oct. 29th & 16th-21st Dec. ...	Proceeding in appeal before Mr. Lucas, Sessions Judge, Poona.

1904

4th January ...	Tilak's sentence reduced and conviction confirmed by Mr. Lucas. Mr. Tilak taken to Yeravda Jail.
7th January ...	Mr. Tilak's appeal to the High Court against Mr. Lucas' Judgment admitted by Jenkins C. J. and Batty J. Mr. Tilak's release ordered.
8th January ...	Mr. Tilak released from jail.
24, 25, 29th Feb....	Proceedings in High Court appeal.
3rd March ...	Tilak's conviction and sentence quashed and fine ordered to be

A FEW EXTRACTS FROM THE HIGH COURT JUDGMENT

AT the Bombay High Court, Appellate Side, on Thursday last, Sir Lawrence Jenkins, Chief Justice, and the Hon. Mr. Justice Batty delivered judgment on the appeal of Mr. Bal Gangadhar Tilak from the decision of Mr. Lucas, Sessions Judge of Poona.

The Hon. Mr. Scott, Advocate-General, with Rao Bahadur V. J. Kirtikar, Government Pleader in Bombay, and Mr. S. C. Davar, Government Pleader at Poona, appeared for the Crown. Mr. Branson, with the Hon. Mr. D. A. Khare, appeared for the accused.

From the death of Shrimant Shri Vasudev Harihar Pandit alias Baba Maharaj on 7th August, 1897, the Chief Justice,in delivering the Judgment, stated succinctly the facts of the case to the trip to Aurangabad, and the ultimate adoption of Bala Maharaj, and said:—

"This brings us to the judicial proceedings in which the false evidence is stated to have been given. It commenced with the petition of Tai Maharaj, to which the executors were parties as opponents, asking that the probate granted might be cancelled. Such an application could only be made under Section 50 of the Probate and Administration Act of 1881, and the only grounds stated in that Section as a just cause of the cancellation which could have had any application, were the fourth and the fifth, with neither of which had the alleged adoption at Aurangabad anything whatever to do. Yet the accused, though cited by the petitioner as her witness, was kept in the witness box, we are told, for no less than seventeen days, during the greater part of

which he was subjected to a most rigorous cross-examination, by the person by whom he was called, on matters wholly irrelevant to the subject then under investigation. It was in the course of this examination that the accused made the statements on which the present charge is based. The law of England requires that a false statement in order to support a charge, should be material to the question in dispute, but the Penal Code does not impose that qualification; so that we need not consider the question how far the statement became material through the error of the Judge who permitted it to be put. We have nothing to do with the second of the two statements, for Mr. Lucas has held the charge in respect of it not proved; we are only concerned with the first. The prosecution in respect of these statements originated with a document described as an order sent by the Court, before whom the application for cancellation of the probate was made, to the City Magistrate of Poona. The offences ascribed by that document to the accused are many, and include forgery and the using as genuine a forged document; yet though the accused demanded that those charges should be proceeded with, this was not done, and the Advocate-General has stated in this Court that all charges except that in question now before us have been abandoned."

The Chief Justice then dealt briefly with the objection that the Magistrate and Sessions Judge failed to call evidence necessary for the proper determination of the case, including the evidence of Kumphojkae Shankar Hari Gurav, Laxman Shivram Maharvada, and Anant Narayen Behele. His Lordship remarked in this connection;— "The Sessions Judge has pertinently remarked that all the Magistrate could assume was that perhaps they would not speak in favour of the prosecution. No reason

personal to Laxman was adduced. I think the objection urged by Mr. Branson to the course adopted by the Magistrate, and not corrected, though disapproved, by the Sessions Judge, well founded. This brings me to the gravest aspect of the case, I mean the objection urged and supported most ably by Mr. Branson, that the reasons of the Sessions Judge are insufficient to support a conviction. Now what is the evidence as to the truth or falsehood of the first statement? The direct oral evidence consists of the sworn testimony on the one side of Tai Maharaj to its falsehood; and on the other of the several witnesses called for the defence, who deposed to its truth. The defence witnesses include :—(1) Krishna Nathu Shastri Durge, exhibit D 67, whose occupation is described as "the observance of the daily routine of ceremonial worship," and who was the astrologer consulted in connection with the Aurangabad adoption; (2) Mahadeo Ganesh Rale, exhibit D 72, a pleader of Aurangabad; (3) Krishnaji Govind, exhibit D 73, an acting teacher in a school on a salary of Rs. 75 per month; (4) Luxman Trimbak Parnaik, exhibit D 74, a pleader in His Highness the Nizam's Court; (5) Vinayek Balkrishna Dongade, exhibit D 77, a schoolmaster on Rs. 12 a month; (6) Raghunath Divarker exhibit D 78, an Educational Inspector's karkoon on Rs. 15 per month; (7) Keshav Vithal Bhide, exhibit D 80, head clerk, Educational Inspector's Office, on a pay of Rs. 45 per month and with a private income as an Inamdar of about Rs. 500 per annum; (8) Shankar Balwant Pophle, exhibit D 81, assistant master of the High School, Aurangabad, on a pay of Rs. 20 per month; and (9) Bhau Saheb Dev, exhibit D 82, Jagannath's father.

Here then we have in opposition to Tai Maharaj's

interested statement, the testimony of several witnesses of apparent respectability, and yet the whole of their evidence is put on one side without a word of comment, beyond a profitless generalisation as to the unreliability of native testimony. These witnesses were not examined before the Sessions Judge, or for the matter of that before the Magistrate, so that this wholesale disregard of their testimony cannot be defended on an appeal to the opportunities of just appreciation commonly ascribed to the officer before whom witnesses are examined." Quoting the case of Madhu Sudhan Sandayal vs. Samp Chandra Sarkar Chaudhri, 4 Moore, I.A., 441, the Chief Justice, said:—"I can find in the judgment of the Sessions Judge no attempt at sifting this large body of Aurangabad evidence, and had it been necessary, I should have been prepared to hold that the absence of any discussion of this evidence call for the defence constituted such a grave omission, that on that ground alone we would be bound to interfere.

After commenting at great length on the documentary evidence in the case the learned Chief Justice remarked:—"In the face of this statement we are unable to understand how the Sessions Judge can have thought that the corporeal giving and taking was never asserted by the accused, or how he could have been led to explain away that explicit statement as merely metaphorical. It was admitted before us that no other expression could with equal propriety have been used to express the corporeal act; and it appears to us antagonistic to the first principles of criminal jurisprudence thus to explain away to the prejudice of the accused a statement, which in its legitimate sense indicates a corporeal giving and taking. The prosecution have attempted before us to get rid of the effect of this document by impugning it as an

antedated fabrication; but nothing has been shown to support this contention, which does not seem to have been made before the Magistrate, was not noticed by the Sessions Judge, and is negatived by exhibit 23.

It would be instructive now to observe the standard of caution in relation to charges of perjury observed by the highest authorities. According to the ancient law of England, from which our system is so largely drawn, the assignment of perjury must be proved by two witnesses or by one witness and the proof of other material and relevant facts confirming his testimony. And we have it on high authority that this "is not a mere technical rule, but a rule founded on substantial justice." The Indian Evidence Act, it was true, did not provide that there must be corroboration to support a conviction, but in ordinary cases—and where the provisions peculiar to Indian Law do not apply—a rule which is founded on substantial justice may well serve as a safe guide to those who have to administer the criminal law in India. Judged by this standard, the convictions clearly cannot stand; but even if it be discarded, it was clear on the face of the Sessions Judge's judgment that there was not enough to support the conviction. To summarise the position, it comes to this. According to the Sessions Judge, Tai Maharaj, the only witness for the prosecution on this point, had given false evidence against the accused in this case, and could not be credited except where her testimony had been borne out in one or other of the three modes named. The Advocate-General in reply to a question from the Court had been unable to suggest that any but the first of these three modes could apply here, that is that Tai Maharaj's statement should be borne out by the documentary evidence. In our opinion, documentary evidence, when

properly considered, absolutely failed to bear out Tai Maharaj's negation. A practical test of the value of these documents might be furnished by supposing that they constituted the sole evidence in the case, and that the accused is being tried on them before a judge and a jury. In such circumstances, we have not the smallest doubt that it would be an error of law for the Judge to allow the case to go to the Jury. And yet we find the Magistrate says that "if it had been found impossible to procure Tai Maharaj's attendance in this court, the case against the accused on the first and most important part of the charge, at any rate, would have lost none, or practically none of its strength." The High Court's view of these documents was that, even on the Sessions Judge's adverse reading of them, they could not in reason do more than create suspicion, and fell wholly short of legal proof or even corroboration. When the judgment was analysed, it would be seen that it was really based on the inferences drawn from assumed silence, but as already shown, that silence could only be assumed by wresting words from their plain and natural meaning and even were this not so, the circumstances at no time demanded the deduction on whose absence the conviction is based.

When the accused's statements are given their legitimate effect—I refer in particular to that contained in exhibit D 14—it will be found that so far from there being a significant silence on his part there was a distinct assertion by him which was never traversed until the proceedings in which he is supposed to have given false evidence. The onus has been wrongly placed; explanations have been demanded from the accused when no occasion for them existed; and the rule that there must be something in the case to make the

oath of the previous witness preferable to the oath of the accused had not been satisfied.

In this connection, said the learned Chief Justice, we may refer to the difficulty experienced by the Judge by reason of the accused's assertion that the actual placing on the lap was on the 28th, but only in order to point out that the difficulty solely arises if Tilak's statement is *assumed to be false,* and that is the whole question in dispute. The fallacy into which the learned Judge has fallen in patent.

In concluding the Judgment the Chief Justice set aside the conviction and sentence and ordered the fine, if paid, to be refunded.

THE HIGH COURT JUDGMENT IN PERJURY CASE *

IT goes without saying that the high-souled authors of the judgment summarised on the preceding pages will be absolutely indifferent to both the praise and the blame which persons differently affected by the judgment will think fit to bestow on them. But the duty of thankfulness and gratitude is, in our opinion, not less imperative than the duty of doing justice. On the other hand even a dutiful Judge may feel satisfaction to be told that in doing his duty it was given to him also to be the means of hitting the nail in the head of a piece of judicial tyranny which had fed upon all manner of illegalities and inequities it had gathered round itself and which had almost succeeded in temporarily confounding men's sense of right and wrong. The service which the present judgment has rendered to the cause of the administration of public justice is certainly not less valuable than the service it has rendered to Mr. Tilak personally. If the judgment has justified the intelligent anticipations of a few whose unclouded perception and invincible faith in the judicial machinery of the British Government led them to predict an honourable acquittal for Mr. Tilak on all the main and the bye issues in the case, it has on the other hand usefully opened the eyes of many whose reason could be easily overawed by the mere solemnity of two judicial pronouncements against Mr. Tilak and who will now only wonder on reading the High Court Judgment how they should have failed to understand

* From the *Mahratta* dated 10th Aprial 1904

and appreciate the plain meaning of such plain things as have been stated in that Judgment as the result of a refined and a second distillation of Mr. Clements' judgment. If therefore we formally thank Sir Lawrence Jenkins and Mr. Justice Batty for their lucid and learned judgment in this case it is more on public than on personal grounds.

After briefly stating the facts of the case and locating the occasion on which Mr. Tilak's alleged false statements were made, the Judges begin that series of judicial pronouncements which impartially takes cognisance of every noticeable feature of the case and which only gathers strength as it advances by a severely critical analysis of the main issues in the case and of the faulty methods by which the two lower courts have attempted to grapple with them. At the very outset they have hinted that as the adoption at Aurangabad had nothing to do with any just cause for the cancellation of the probate, the statements made by Mr. Tilak in reply to questions put or allowed by Mr. Aston would become irrelevant, and but for the wording of the Penal Code would also become so immaterial as not to sustain a charge of perjury. Next, even taking the Penal Code as it is the objection of Mr. Tilak's Counsel on the ground that the lower courts failed to call evidence necessary to determine the case would have in the opinion of the judges proved fatal to the conviction. Then proceeding to consider the gravest aspect of the case viz. insufficient reasons of the Sessions Judge to support the conviction, the High Court Judges condemn Mr. Lucas' gratutious and wholesale rejection of the direct oral evidence of a body of apparently respectable witnesses on the side of Mr. Tilak without even an attempt at shifting or appreciating it. And "had it

been necessary," they say, "we should have been prepared to hold that the absence of any discussion of this evidence for the defence constituted such a grave omission that on that ground alone we would be bound to interfere." But on going deeper into the question of oral evidence they find the case to be only the worse for the prosecution in that the Sessions Judge has found that the oral evidence of the single witness on the side of the prosecution whose oath contradicts the oath of Mr. Tilak was unreliable. It is easy to see that Their Lordships have found in the evidence of the Aurangabad witness nothing that would warrant its rejection as evidence in support of the fact of adoption; and they declare in so many words that " the accused had reason to complain of the failure to discuss the testimony of the witnesses called by him," and they have summarily set aside the Magistrate's view that the oral evidence tendered on behalf of the defence is not reliable on account of the extreme popularity of Mr. Tilak and some other grounds of like nature all of which are mentioned only to be condemned. The case for the prosecution, thus thrown only on documentary evidence could not, in their Lordships', opinion, have ended in conviction. For, here there was only one witness on the side of the prosecution who was herself a prejurer and whose evidence, moreover, being uncorroborated by documents was entirely unreliable. Here then again was one more fatal legal objection to conviction independently of the merits of the case. The only evidence against Mr. Tilak, therefore, was to be found in the documents and that too not in the nature of express statements exclusive or inconistent with what Mr. Tilak had stated in his depositions but only in the nature of want of a mention or silence on his part in some of these documents. On this point their

Lordships have subjected the documents to a severely critical examination; and after discussing very document they have arrived at the conclusion that the silence in them was not real but only assumed by the lower Courts, that so far from there being a significant silence there was on Mr. Tilak's part a distinct assertion which was never traversed by the other party till he was examined before Mr. Aston. For silence to carry incriminating force in a case like the present, observe their Lordships, there must have been circumstances which not only afforded the accused an opportunity to speak, "but naturally and properly called for the declaration which is said to be absent." The fallacy lay in estimating what the documents should have contained in the light of subsequent disputes; and speaking of the documents as adversely read by the Sessions Judge, their Lordships declare that even an such adverse reading they 'could not in reason do more than create suspicion and, fall wholly short of legal proof or even corroboration." As for their Lordships' constructive comments on the documents it is enough to point out that they hold a distinct assertion to have been made in them. Here was a case in which there was a distinct assertion in one part and only an '*assumed*' silence in another part of the documentary evidence. Both the lower courts took their stand on the silence by *assuming* it; and tried to explain away the words of distinct assertion, an attempt which naturally landed them in the absurdity of ascribing to the accused an intention to use metaphorical words where he could get and would naturally use words in their plain or primary meaning. And all this round about procedure had to be resorted to evidently because there was a determination to convict Mr. Tilak! The proper judicial method in a case like this would have

been to take a stand on the distinct assertion and to allow it due effect in explaining away the seeming silence or omission. All this is really elementary criminal jurisprudence. But curiously enough the principal service which the present judgment renders generally to the cause of the administration of criminal justice in this country lies in the very fact that it prominently brings out that elementary principle clearly to the front as it was apparently forgotten by legal advisers of Government, the special Magistrate, and experienced judges. When even elementary principles are thus forgotten, Mr. Tilak cannot perhaps make a grievance of the fact that the Courts which tried him did not come up to the legal acumen which he himself showed, though curiously enough, apart from the question of objections which Mr. Tilak unsuccessfully urged in the lower Courts but were upheld by the High Court, there was at least one point of distinct legal acumen shown by Mr. Tilak which has been appreciated by the High Court Judges. In a certain document, a plaint for an injunction against a second adoption by Mr. Tilak alone and as a trustee, and on the ground that the second adoption was sought to be prevented as leading to a breach of trust, the first adoption was not mentioned. This omission was of course made much of by the Magistrate and regarded as a very significant fact by the Sessions Judge. Their Lordships, however, made the following observations on the point: "We cannot understand how such an argument can have been seriously advanced or for a moment entertained. The suit was brought by the accused alone for an injunction so that the events at Aurangabad were *irrelevant*, for, even a giving and taking would not have created a right of suit in the plaintiff. His cause of action was the attempt to adopt

without his consent. And yet an inference adverse to the accused has been drawn because he has refrained from making an allegation that was not relevant!"

The brief analysis of the High Court Judgment which we have attempted above will, we hope, enable the laymen among our readers to appreciate the admirable method and the still more admirable independence of view which their Lordships have exhibited in deciding the case.

TILAK SEDITION TRIAL *

THE great *Tilak Trial,* which was held at the third Criminal Sessions of the Bombay High Court from the 13th to the 22nd July 1908, is the second State prosecution for sedition against Mr. Tilak, the first one being in 1897. In both the cases Mr. Tilak was prosecuted in his capacity as the publisher of certain alleged seditions matter in his paper the *Kesari.* Mr. Tilak was even in 1897, as of course he is to-day, the most popular Mahratta in India. And the *Kesari* which now enjoys the largest circulation of all newspapers, Indian or English, in this country was even eleven years ago the most widely circulated newspaper in the Bombay Presidency. In the back-ground of both the prosecutions there was a scene of great popular unrest due to the operation of a repressive policy on the part of the Government resulting in political murders. Both the cases were tried by a Judge of the Bombay High Court with the aid of a Special Jury, a large majority of which was made up of Europeans, and which found Mr. Tilak guilty of sedition on both the occasions by a majority in exactly the same proportion which the European element bore to the Indian in that body. It only remains to be added that in both the cases the Indian public by an almost unanimous voice adjudged the prosecution to be ill-advised and the conviction unjust.

The genesis of the present prosecution could be traced to the abortive session of the Surat Congress, in December 1907, which marked the culminating point of the unpleasant relations between Mr. Tilak as the leader of

*Being the introduction to a book published in 1908

the New Party and the Moderate school of Indian politicians ; and these relations might be taken as being in a way the reflection of the relations between Mr. Tilak and the New Party on the one hand and the Government on the other. The out-burst of sentimental violence and political crime in Bengal had for some time past helped to accelerate the process of disintegration in the body of political workers in this country. And the news of an attempt on the life of Mr. Allen, the Collector of Dacca, only a couple of days previous to the session of the Surat Congress was universally regarded as calculated to complete the fermentation of the political situation which was yeasty and uncomfortable enough already. When the Congress dispersed at Surat on that memorable 27th of December 1907 and the components of that unusually large gathering went away to their homes in different parts of India, carrying with them bitter memories and sullen thoughts, it looked as if glowing sparks from a fearful furnace had been driven by a malignant wind and spread broad-cast among magazines full to the brim with combustibles. The first few weeks after the Congress witnessed the course of futile but aggravating recrimination between different Congress camps, while Government were wisely replenishing their resources of repression with a view to deal an effective blow at the New party. The bomb outrage at Muzzafurpore towards the end of April 1908 offered Government the psychological moment for inaugurating an era of arrests, searches, prosecutions and persecutions to which not even a distant parallel could be found throughout the whole course of the history of India under British Rule.

In these affairs Bombay had of course its own share ; and the Government never concealed their belief that

whatever might or might not happen in Bengal or else where, Mr. Tilak was the cause of all political activity and that no campaign of repressive prosecutions could be ever complete unless it involved this towering leader of the New Party. Since his return from Surat Mr. Tilak had, moreover, shown unusual activity. He organised the District and the Provincial Conferences and brought the Temperance agitation in Poona to a head. The organised picketting at liquor shops was looked upon by Government officials as the first object-lesson in the training of national volunteers; and as Mr. Tilak began to extend his lecturing tours to places even outside Poona, Government must have concluded that it was no longer safe to keep Mr. Tilak free. By the time the Bombay Legislative Council met at Poona on the 20th of June, Government had apparently decided to strike the blow at him; and when His Excellency Sir George Clarke, the Governor of Bombay, remarked that certain persons who possessed influence over the society were in the habit of exciting feelings of hatred and contempt against Government and feelings of animosity between classes of his Majesty's subjects, that these persons were only playing with fire and that Government would not be deterred by anything to put the law in motion against them, there was hardly any one who had any doubt in his mind as to the real objective of those remarks. Already four Native newspapers in the Presidency were on their trial for sedition; and there could possibly be no mistake as to the personage who was now specially meant to be honoured with the pregnant minatory pronouncement referred to above. A week before this, Mr. S. M. Paranjape the editor of the *Kal* and a friend of Tilak, was committed to the High Court Sessions; and when he shifted his camp from Poona to

Bombay to assist Mr. Paranjape in his defence, Mr. Tilak himself had a sort of premonition that he could not return to Poona for a considerably long time. Two days after the Governor's speech the official sanction for Mr. Tilak's prosecution was signed at Bombay, and on the next day, that is to say, on the 24th of June at about 6 p.m. Mr. Tilak was arrested at the *Sardar Griha* where he was putting up at the time. The same evening his house and press at Poona were locked by the Police where the next day they conducted a search under a warrant by the Chief Presidency Magistrate of Bombay. By an extention of the warrant authorised by the District Magistrate of Poona, the Police also searched, on the same day, Mr. Tilak's residence at the hill-fort sanitarium *Singh Garh*, following the unusual procedure of breaking open windows and conducting a search behind the back of any recognised representative of the owner. The search* at both the places resulted in nothing of imporantce being found except a post-card, with the names of two books on explosives written thereon, which was made so much of at the trial.

On the 25th of June Mr. Tilak was placed before Mr. Aston, the Chief Presidency Magistrate, who rejected an application for bail and remanded him to jail. While Mr. Tilak was in jail it somehow dawned upon the Bombay Government that it was risky to stake Mr. Tilak's ruin upon the article of the 12th of May alone, and another sanction to prosecute Mr. Tilak, for publishing the leading article in the *Kesari* of the

* All the papers taken in custody were either necessary for a formal proof of Mr. Tilak's connection with the *Kesari* or mere innocent curiosities of a miscellaneous nature. The second kind of papers were put in by the defence itself to show the kind of company in which the card was found. As regards the card it was successfully explained

9th of June, was signed at Bombay on the 26th of June. A fresh information was thereupon laid before Mr. Aston who issued a fresh warrant which was executed on Mr. Tilak in jail. On the 29th of June some formal evidence was recorded, and Mr. Aston committed Mr. Tilak to the third Criminal Sessions of the Bombay High Court on two sets of charges under Section 124 A and 153 A, by two separate orders of commitment.

The day next after his arrest, Mr. Tilak was lodged in the Dongri jail at Bombay. Here as an under-trial prisoner he was allowed the use of food, bedding and clothes supplied to him from his home. But Mr. Tilak had to suffer from a grievance which was worse than any physical discomfort. He was practically handicapped in the preparation of his defence.

On the 2nd of July an application was made by Mr. Jinnah, Bar-at-Law, to Mr. Justice Davar, who presided at the third Criminal Sessions, for Mr. Tilak's release on bail, and rejection of this application together with its surrounding circumstances conclusively showed the way the judicial wind was blowing.

Notice had been by this time served on Mr. Tilak's Solicitor that the Crown would make an application to the Court for directing that a Special Jury should be empanelled to try Mr. Tilak. It was most unfair to make such an application as Mr. Baptista's able argument against it shows. But Government was lucky enough to be able to run on the innings merrily in their own favour entirely from the beginning, and the hearing of

---

away by Mr. Tilak, and eventually both the Judge and the Advocate-General had nearly to admit that it could not carry the proof of the charge of Sedition against Mr. Tilak any further than the incriminating articles themselves could do.

the application for a Special Jury on the 3rd of July resulted in its being granted.*

Between the day of the rejection of the application for bail and the day of the trial Mr. Tilak had slightly over a week within which to prepare his defence. The authorities had of course given him certain facilities in this respect; but after all only a very limited number of friends could go and see him during a limited number of hours of the day. And eventually such defence as Mr. Tilak could actually prepare was not because of the facilities which were given to but in spite of the restrictions which were imposed upon him. The speech which Mr. Tilak delivered in his defence occupies nearly a hundred pages of this book and bristles with references to legal and literary works. That shows in a way the great resourcefulness and the power of Mr. Tilak's mind and memory.

The trial opened on the 13th of July, and attention was centred on the first day on the ruling the Judge might give on the question of the amalgamation of the two cases in one trial and on the constitution of the Jury. In the first matter Mr. Tilak's objection was over-ruled; the two cases were amalgamated; and as many charges were put together as the Judge then thought he might combine so as to be technically within the law. Mr. Tilak objected to the amalgamation both on the ground of law and of the prejudice which might be caused to him by the confusion in his own mind as well as in the minds of the Jury in respect of the different charges, which

* It may be noted that one could easily know how to interpret the language of Mr. Justice Davar when in disposing of the application he remarked that "it was in Mr. Tilak's own interest that he should have the benefit of being tried by a Jury selected from the citizens of Bombay from a higher class of citizens."

really deserved to be separately tried if the requirements of justice were to be satisfied. The evil effects of this amalgamation were not long in being realised ; for, as will be seen from the proceedings, practically one single article was made the ground of three convictions and sentences on three different charges. As regards the constitution of the Jury, the Judge in granting the application of the Crown for a Special Jury had expressed an expectation that the panel summoned would be such that, making allowance for the challenges, there would be a fair representation of the different Indian communities on the Jury as actually empanelled in the box. But far from that being the case the Jury was made up of seven Europeans and two Parsis.

The recording of the evidence for the Prosecution, which was more or less of a formal character, occupied the Court for about two and a half days. The only witness that was cross-examined, with any degree of keenness on the part of Mr. Tilak, was Mr. Joshi who was put into the box to identify certain signatures, to put in the incrimininating and other articles, and to certify to the correctness of the translations which not he himself but some one else had made. Mr. Joshi could thus be cross-examined not as one responsible for the translations himself, but more or less as an official expert who could take liberties with the questions put to him in the cross-examination or give answers with a certain sense of irresponsibility. The record of this cross-examination, which was searching and creditable to the Marathi scholarship of a man like Mr. Tilak, will show that Mr. Tilak completely succeeded in establishing the merits of the objection which he subsequently dwelt upon in his speech, namely, that though not purposely distorted the mistranslations were numerous enough and

calculated to create a wrong notion in the reader's mind about the spirit of the Marathi articles.

Out of the fifteen exhibits put in for the Prosecution seven were articles from the *Kesari*, two were Government sanctions for the prosecution, two more were Mr. Tilak's formal declarations as press owner, printer and publisher, and two others were the search warrants; one was the copy of the Panchanama of the search in which were noted sixty-three documents which were seized by the Police. And the remaining exhibit was the post card. Of these Mr. Tilak objected to the admissibility of the articles other than the charge articles and to the post-card. But his objections were over-ruled. As regards the Panchanama, with the exception of the post-card, one portion of the papers included therein were not put in at all by the Prosecution, but were returned to Mr. Tilak. The remaining portion was bodily put in as a whole bundle by Mr. Tilak along with his written statement. This bundle Mr. Tilak had to put in only for the purpose of showing the character of the papers and the conditions in which the postcard was found. But the putting in of these papers even for that limitted purpose was regarded technically as amounting to giving evidence for the Defence, and that cost Mr. Tilak the right of reply which is extremely precious to an accused person, especially in a trial by Jury. Having lost the right of reply, Mr. Tilak decided also to put in a number of newspapers which were calculated to prove his contention that his articles were written in a controversy, and as replies to the points, as they arose in the controversy, between the Anglo-Indian papers on the one hand and the Indian papers on the other. Mr. Tilak's statement was a simple and a brief one in which he asserted that he was not guilty

and described the real character of the incriminating articles.

Mr. Tilak opened his speech for the defence at about 4 P.M. on Wednesday, the third day of the trial; and with the exception of Saturday and Sunday following he occupied the time of the Court up to about the noon of Wednesday, the 8th day of the actual sitting of the Court. It would, we think, be superfluous to say anything about the speech which is undoubtedly a memorable one from many points of view. Mr. Tilak did not command 'eloquence' as the word is usually understood. But it amply served the purpose which Mr. Tilak really meant to serve by undertaking to defend himself in person. And whatever the verdict they gave, the Jury must have, during the days of the speech, acquired an intimate knowledge with the master mind of the man on whom they were called upon to sit in judgment. The speech lasted, as the Judge himself was careful enough to note for a purpose of his own, for twenty one hours and ten minutes and no Jury, constituted of average men, could fail to perceive that whatever Mr. Tilak's faults as a speaker, they could not have much fault to find with him as a man. And on the hundreds of highly educated people who crowded the Court every day and thousands who read the reports outside, the speech had undoubtedly a greatly elevating effect.

As the speech is one of extraordinary dimensions, it may be worth while just to briefly summarise the principal points made by Mr. Tilak in order to facilitate its comprehension by the reader. The amalgamation of two cases, the joinder of four charges, and the subsequent dropping of one of them only to make the trial good, was illegal, and likely to cause prejudice. The admission of articles other than the incriminating ones to prove

intention was improper. The post-card was inadmissible. The translations of the articles instead of the originals were made the basis of the charges. The whole of the articles were embodied in the charges and the particulars of the manner in which the offences were committed were not specified by setting out particular words or sentences alleged to be seditious under Section 124 A or criminal under 153 A. Mr. Tilak practically gave a discourse upon the law of Sedition in England and the law of Sedition in India and made some interesting new points about the construction of sections 124 A and 153 A. With regard to Section 124 A Mr. Tilak pointed out that the first portion of the Section did not apply to him at all, because that contemplated the fact of an actual excitement of disaffection, and there was in this case no evidence given whatever to show that Mr. Tilak's writings resulted in such actual excitement of disaffection. What was proved in the case was only the words of the published articles and the identity of their publisher. The real character of the words of the articles was a matter for the Jury; but no evidence was given to show to the Jury, who did not know Marathi, that the words were really capable of the meaning which the Prosecution sought to attribute to them. What remained of Section 124A, therefore, was only an attempt to excite disaffection. Mr. Tilak elaborately discussed the meaning of the word 'attempt'. He contended that the word could not be taken in its ordinary meaning but that it had a special meaning of its own. An act under the Section must be an intentional and premeditated act with the definite object of exciting disaffection, which must be proved to have failed in accomplishment by causes not dependent upon the will of the man making the attempt but operating quite independently of his

control. There was here no evidence of the success of the attempt, or of the failure being due to something operating independently of Mr. Tilak's will. As regards the object of the attempt, even supposing that the words of the articles were likely to create disaffection, the creation of that disaffection was not the object with which the articles were written. Even when a writing may be violent or reckless and even when there may be a likelihood of disaffection being caused thereby, the writer could not be punished for an attempt under 124 A, if he has no criminal intention. The question of intention was therefore the principal one to be considered; and in deciding this question it was improper and unsafe to follow the maxim of civil law, namely, that every man must be presumed to *intend* the natural consequences of his acts. This intention could not be a matter of presumption, nor could it be proved only by the character of the words or inuendoes in writing. Criminal intention must be positively proved by the evidence of surrounding circumstances. The motive or object with which an act is done is of course not identical and ought not to be confounded with intention; but this motive or object is necessarily one of the most reliable indications in an inquiry as to intention. His real object or motive in writing the articles, Mr. Tilak contended, was to give a reply to the theories and suggestions, which were controversial enough, of Anglo-Indian and other critics who took the opportunity of the bomb-outrages merely for recommending to Government an aggravated policy of repression. The surrounding circumstances showed that; and to prove this one circumstance Mr. Tilak had to put in seventy-one newspapers, Indian or Anglo-Indian, a perusal of the articles in which would show how big was the controversy that was raging.

Mr. Tilak's intention could not be to excite disaffection because the articles showed that they were written with the express purpose, mentioned in so many words in the articles themselves, of giving advice and a warning to Government. The construction put upon the words of the articles by the Prosecution was unjustifiable. In the first place the words relied on were mistranslations, some of them very gross ones, calculated to mislead the mind of the jury. The translator himself was not put into the witness box, but an official expert who generally certified to the correctness of translations which he himself had not made. Even when the necessary corrections were made, there remained the inuendoes ascribed to the writer. No specific inuendoes were charged and therefore no inuendoes could be found or supplied by the Jury. But the Prosecution affected to find an ineundo in every word, as it were, on the gratuitous assumption that the writer was actuated by a criminal intention. This intention they had not proved. As for the language of the article it had to be remembered that in writing on a high political thesis, the writer had to labour under the disadvantage of the Marathi language not yet being able to cope with the progress in the political life of the country. Even the official expert had to use antiquated dictionaries in the witness box to translate certain sentences put to him in the cross examination; and even when he had the help of those dictionaries he could not help making himself ridiculous by making queer translations of sample words and sentences. That should give an idea as to the hard task a leading newspaper writer has to perform as he has to write on all manner of subjects without long notice and sometimes on the spur of the moment. Moreover the words and ideas for which Mr. Tilak was now being sought to be held responsible were not inven-

ted by him. They formed a part of the political controversy which had been raging in India for over thirty years past between the official and the pro-official party on the one hand and the popular party on the other. If the language of the articles was properly understood in the light of these considerations, then the Jury would have no difficulty in acquitting him. Something more than the mere objectionable character of certain words had to be proved to bring home the charge to him; and the Prosecution not having done so, the Jury had no option but to acquit him. He appealed to the Jury to regard the question as one not of an individual, much less that of a man who was not a *persona grata* with Government, and who might be regarded as their political opponent but as one involving the liberty of the Press in India. He appealed to them to bear in mind the traditions of their fore fathers, who fought for their liberty of speech and opinion, to regard themselves as guardians of the Press even in India, to stand between the Press and the Government, and to temper the operation of hard laws. He told them that they were not bound by the direction the Judge would give them as to the facts and reminded them that in India to-day, as has been the case in England since Fox's Libel Act of 1792, the Juries are the sole Judges of the merits of a seditious libel. The vigilance of the Juries in England saved the liberty of the Press and rendered the prosecutions for sedition rare in England; and he begged of the Jurymen that they in India too would be actuated by similar public-spiritedness.

Mr. Tilak finished his address to the Jury at about 12-30 noon on the eighth day which also proved the last day of the trial. The address of Mr. Branson, the Advocate-General, was conceived in a satirical spirit and

at times he indulged in language to which strong objection could have been taken. This address lasted for about four hours, but was apparently hurried up to a close. After the close of Mr. Branson's speech the Judge delivered a strongly adverse charge. The Jury retired at 8-3 P. M. and returned at 9-20 P.M. On all the three charges they, by a majority of seven to two, found Mr. Tilak guilty, and the Judge, accepting the verdict, sentenced Mr. Tilak to six years transportation and fine of one thousand rupees, but not before he addressed him bitter words of reproach which Mr. Tilak had a right to regard as only insult added to injury. Mr. Tilak, however, had an occasion to tell the Judge as well as the public what he thought about it all; and when asked whether he had any thing to say he uttered in a solemn and piercing tone the following words from the dock :—

"All I wish to say is that in spite of the verdict of the Jury I maintain that I am innocent. There are higher Powers that rule the destiny of things and it may be the will of Providence that the cause which I represent may prosper more by my suffering than by my remaining free."

For the couple of hours since the Jury retired to consider their verdict the big Court room was possessed by a solemnity of feeling which was marked on every face. The dim gas-light in the hall only added to the effect of the dead silence on the part of the spectators who were looking from the Judge to Mr. Tilak and from Mr. Tilak to the Judge. The whole thing over, Mr. Justice Davar rose at 10 P.M. and all rose with him; and Mr. Tilak was spirited away in the twinkling of an eye.

It was not till about 7 P.M. that evening, that the news about the Judge's determination to finish the case that night leaked from the High Court, which was kept

specially guarded in all directions. And yet within a couple of hours thousands of people gathered at the entrances to the High Court and were anxiously waiting to know the result of the trial. Heavy showers of rain were at intervals falling, and the dim light in the streets combined with the murky weather spread a pall of gloom which could not but affect the minds at least of those who were absorbed in imagining what must be passing in the Court house to which all access was completely prohibited. At about 10 P.M., the secret was out; there was bustle and commotion all round the High Court buildings; the mounted police were galloping in every direction to disperse the crowd; and the sad news of Mr. Tilak's conviction and sentence was conveyed from soul to soul almost by a process of telepathy. The Police and the Judge thus successfully prevented what might have been a monster demonstration. But the next morning when the news of the doings of the previous night spread like wild fire through the city the people felt aggrieved, as it were, at the smartness of the authorities and they commenced demonstration with a vengeance. The effect of the news of Mr. Tilak's conviction and transportation, especially upon the masses, was something tremendous. The great millhand population was determined to strike work in honour of Mr. Tilak and by a spontaneous movement the Bazar in several quarters in the city were closed for business. The streets, however, were kept alive by the cries of newspaper boys, for in the course of that half week Mr. Tilak's pictures, newspapers giving accounts about him and leaflets containing songs composed in his honor were sold by tens of thousands. The popular feeling about Mr. Tilak was manifested in a hundred other ways in private and public places in the great metropolitan

City. The Police and some other people who were endowed with a larger measure of blind loyalty to Government than tact, discretion or common sense, most unwisely interfered with the passive demonstration. Some of the millhands also went out of their way in trying to coerce those, whom they regarded as the black-legs among them, into stopping work. The general result of all these contributory factors was that the mob mind got out of control and there was rioting in several parts of the city; the military had to be called out and firing resulted in the deaths of 15 and the wounding of 38 people. For nearly six days business was at a standstill and a reign of terror prevailed in many parts of the city. These unusual demonstrations completely proved the great depth to which the roots of Mr. Tilak's popularity had penetrated in a population which is generally regarded as the least homogenous in formation and the least susceptible to political sentiment.

HOME ONCE AGAIN *

AFTER an absence of almost six years Mr. Tilak returned to his home on Wednesday before last. He left Poona on the 22nd of June 1908 for Bombay where he was arrested on the 24th and was in jail continuously since the time, as the application for his release on bail during the period of his trial was not granted. At Mandalay he passed nearly all his six years with the exception of a couple of months, when he was removed to another jail on account of the prevalence of Cholera at Mandalay. His stay at Mandalay has been the longest stay at a stretch at any place during Mr. Tilak's life; and one can vividly imagine the contrast between his solitary confinement in a two storied room of 20 × 12, looking out upon an enclosure of a quarter of an acre, and the crowded arena of the nation-wide activity which Mr. Tilak had made his own, immediately previous to his prosecution. Here he was completely shut out from the outer world, and left with no other company except that of a convict cook. And it is awful to imagine what would have been his fate but for the number of books that were allowed to him. Himself an eminent man of letters, Mr. Tilak must have read some of the endless eulogies which have been passed on the value of books; but never before could he have better realised why one author calls them the agreeable 'companions of solitude,' or another 'soothing comforters of sorrow.' And frankly speaking, the use of books was the greatest kindness that Government ever showed to him.

In the small slice of jail life which fell to his lot in

* From the *Mahratta* dated 28th June 1914

1881 the imprisonment was simple, and Mr. Tilak could not perhaps have found much difficulty in passing his 101 days, though without books, as he was closetted with Mr. Agarkar, who was his colleague at school and with whom he had shared the delight of building many a castle of dreamy aspirations and ideals. During the second term of Mr. Tilak's imprisonment which was in 1897-98 he had a convict's work to do; and though his time was not much vacant he was greatly reduced on account of his prison diet and labour. In this the third period of Jail-life Mr. Tilak was in some respects better treated than on the last occasion. In fact, with the exception of a few days at Ahmedabad he was given milk and ghee; and for the last two years or so in consideration of the fact that he was suffering from diabetes he was allowed to have a special diet of barley, and also tea or coffee at his own expense. But a six years term of transportation at the age of 52, in all conscience, borders certainly too much on the side of rigour. Never was a a more terrible euphesim uttered than when Mr. Justice Davar told Mr. Tilak that in the interest of the country which he professed to love he should be sent out of it for *some little time.* But evidently it was mocking at mercy itself to profess to regard six years as some *little time.* Time in the abstract is so long that any period, however great, may be spoken of as *little* in comparison with its total quantity. But six years' transportation for a man of 52 years of age is certainly too serious a matter to admit of a practical joke. We don't know whether the learned Judge had any reasons to anticipate that Mr. Tilak's term of transportation would eventually be converted into one of simple imprisonment. But supposing he had none, one only stands aghast at the meaning of the sentence of transportation,

which under ordinary conditions should have been to the Andaman Islands, and should have included a period of rigorous imprisonment in the beginning.

But the simple imprisonment at Mandalay was in some respects even worse than what the life at the Andamans would have been, at least so far as Mr. Tilak could imagine it. For we know he had actually made an application to Government to remove him to the Andamans; so disgusted was he with his solitary confinement at Mandalay, though there with Southey he could say –

> Around me I behold
> Wherever these casual eyes are cast
> The mighty minds of old:
> My never failing friends are they.
> With whom I converse day by day.

He had many authors by his side to fill the vacancy of his solitude. And imitating a well-known passage of Leigh Hunt, we may even say that though confined in a room of 20 × 12, Mr. Tilak could, if he liked, go out hunting with the primeval Aryan warriors in the Rig-veda; enjoy the superb glory of the Aurora with the Pole star at zenith over-head; busy himself with the ritual mysteries of the Vedic sacrificers gathered around their sacred Vedis, revel in the prospective clash of arms when the numberless armies of the Pandavas and the Kowrawas met on the blood-thirsty Kurukshetra; listen to the song celestial as it was delivered in divine accents by Krishna to Arjuna: or to be more matter of fact, take a tour round the world in company with the authors of the *Hintorian's History of the World.* But solitary confinement, with no more enlightened company than that of a convict cook, proved a veritable file on which all the imaginable charms of book-reading in

solitude, soon became threadbare and were eventually worn away leaving Mr. Tilak pining for more elbow-room and greater freedom of movement.

We have indeed known people who were inclined to be enamoured or touched with the romance of the motor car, the special train and the special boat, all of which were requisitioned at one time or another for Mr. Tilak's use during these six years. And we feel amused at the silly impressionableness of these who put down the actual use of all these choice amenities of a a luxurious life in the case of Mr. Tilak to the official solicitude for his ease and comfort. But if the truth must be told all these matters had a thick lining of self-regarding convenience. They were brought into requisition because Government wanted to keep Mr. Tilak's movements strictly secret. Thus Mr. Tilak, while being removed from Bombay to Rangoon in 1908, had the whole of the steamship 'Hardinge' to himself as a special boat. But all the time he was on board that vessel he was confined to an ill-ventilated and smothering cabin used as a prison cell for rebellious sailors, at the bottom, and allowed to come on to the deck for only an hour or so in the evening under escort. It is true that Government spent several thousands of rupees in this manner on making provision for Mr. Tilak's movements. But they were, we believe, nothing more than the price of an unreasonable craze, as it were, for keeping everything about Mr. Tilak strictly secret. Apart from this it could not be said that Government made any special expenditure to secure his comfort. In fact, the official economic conscience often strained itself at eating gnats whereas in other ways whole camels were devoured. The cost of keeping the table for the discrowned French Emperor at St. Helena was, according to an English biographer, a

matter of dispute; and we could not complain if Mr. Tilak had to pay from his own pocket for his weekly shave. But the expenditure incurred by Government for Mr. Tilak is not in point. What is relevant is the solitary confinement they enforced on him, not allowing him even the sight of the humanity in the Jail, nor the slightest scrap of public news. The letters to him and from him had of course to keep strictly to personal house-hold matters; and while Government showed disapproval of the permission given to Mr. Tilak to read the Press Act specially sent to him, the letter of advice which he wrote in return with the Jailor's permission to Mr. Kelkar, the editior of the *Kesari* and the *Mahratta* during his absence, was intercepted and never afterwards allowed to reach the latter's hands.

The knowledge of parallels is very tempting and makes their use irresistible. And we are in this connection reminded of the treatment given by the British Government to the Irish agitator Mr. Daniel O'Connell, whose career bears some resemblance to that of Mr. Tilak. When sentenced to a year's simple imprisonment, as the result of a prosecution for agitation, O'-Connell was treated like a veritable lord. In fact one feels amused at the things he and his fellow prisoners were allowed to do in the jail. O'Connell's friends were asked to choose the best jail for him; and he was put up in the jail so chosen. The best apartments in the jail were of course those occupied by the jailor; and evicting the jailor from these, Government gave them in Mr. O'Connell's charge. He was allowed to requisition his everyday food from outside, to accept presents from friends, to receive guests and give tea parties, to enjoy the company of his grandchildren and play with them in the garden, to indulge in mimic public

meetings and harangues, to edit a 'jail newspaper' and to while away his time listening to half a dozen harmoniums. The meaning of all this seems to be that in the case of a certain class of prisoners the loss of liberty is in itself punishment enough ; and the bread of captivity need not be made extra-bitter by the enforcement of rigorous solitude. Well, whatever the nature of his prison life, Mr. Tilak is now free once more. He has been welcomed to liberty by almost a chorus of friendly and appreciative public opinion. And let us hope that restored to sound health he would soon begin to devote his attention to his literary and political activities which have marked his eventful life. He will of course begin the new life under conditions altogether altered to himself as well as others. But a genius, like a good workman, not only knows his business well, but can also mend or construct his own tools to suit any given conditions. So it would be, let us hope, with Mr. Tilak.

OFFICIAL BOYCOTT ON TILAK*

IT is, we think, due to the public to let them know that although Government have released Mr. Tilak from imprisonment in an actual jail, they are not inclined to make the boon of liberty as absolute and unqualified as Mr. Tilak, in the capacity of free citizen, has a right to expect. For ever since the moment Mr. Tilak was allowed to set his foot in his house on the 17th ult. Government have established a close and rigorous surveillance on him. A couple of police stations have been newly created within about a hundred yards on either side of his house, and the names of all such persons as visit his house are carefully noted. The work has been moreover entrusted to people who, though not wearing police uniform, boldly and openly accost visitors to the house, whatever their business therein; and if names are not given, the persons concerned are shadowed to their destination, and the more gullible amongst them are taken to Faraskhana. The whole thing is done so barefacedly that there is neither skill nor grace about the detective work in progress. The complete loss of pretence makes the thing inartistic, and one can now see in this instance the *reductio ad absurdum* of the principle of police surveillance.

It may perhaps be said that Mr. Tilak, considering his relations with Government, has no right to expect any better treatment at their hands. The contention in the first place is not valid; for whatever Mr. Tilak's offence, he must be regarded as having completely atoned for it, by undergoing almost the whole of his six years of

* From the *Mahratta* dated 26th May 1914.

transportation. The generous instinct of sportsmanship should, we think, rise above the mean expediency of politics even in Government officials. It would not altogether be unreasonable to say that after six years of imprisonment Government and Mr. Tilak should be quits ; otherwise there would be no end to things. A case of sedition when it amounts to an offence is a case of loss of temper ; and Mr. Tilak having expiated his moments of criticism—perhaps intemperate criticism—of Government by years and years of imprisonment, it would be legitimate to expect that Government regarded the state of relations between them as a clean slate. But Government themselves have brought forward the whole balance of animus against him as it was before his conviction. More over they have begun to do unpleasant writing on the slate in a most aggressive form, so that one almost forgets the six years of natural respite on Mr. Tilak's part and finds the political vendetta or blood-feud in full progress and with only an accumulated force.

We might concede that Government are entitled generally to remain in touch with Mr. Tilak's movements : but during the last month while there have been no movements on Mr. Tilak's part, Government have extended their watch to the movements not only of those who visit him, but even those who visit his house on any business. And the grievence of these visitors is perhaps greater than Mr. Tilak's own grievance. After an absence of six years Mr. Tilak would naturally like to see his friends and acquaintances, using these words in their broadest and most liberal sense. Whatever Mr. Tilak's politics, he lives in a city and in a society in which during the last 40 years of his life he has come into contact with hundreds of social relations. Mr. Tilak had

been many things before he was a politician, and also many things while he has been a politician. The general *enmity* to British Government which Government ascribe to him must have been, even according to Government's own computation, comparatively a recent event. And surely it would be unreasonable in the extreme for Government to make this subjective or objective enmity to relate back, in such a way as to vitiate every variety of relations in which Mr. Tilak must have come into contact with the men of the society. He has been a student and he has been a teacher. He has been an author, and a friend and a referee of men of letters. If he has not founded every institution in the City, he has at least had to take interest or help the progress of many of such institutions. He has been a trustee of estates, he has been a private guardian of children, he has been a choosen arbiter of disputes, and more than all he has been universally referred to or approached for expert, business— like or legal advice by people who, whatever his politics, have looked upon him as a shrewd and safe guide in complicated affairs. It would not be perhaps too much to say that the larger part of Mr. Tilak's popularity was ever due less to his politics than to his learning, to his character and to his social helpfulness. And now Government would set their foot down and expect that simply because *they* choose to regard him as an enemy of Government, the whole volume of his relations with society and the society's relations with him should be a complete blank and oblivion. They would be glad to see his house turned into a howling wilderness which should be shunned by every soul as if it were a plague-spot, a hot bed of pestilence, and an abode of all that was harmful to, or destructive of, dutiful citizenship.

The above description is not drawn from our imagina-

tion. For the rigorous surveillance upon Mr. Tilak referred to above has resulted in a number of persons *connected in any way* with Government being found to visit Mr. Tilak's house, and consequently grave warnings being administered to them against a repetition of what Government regard has been a *punishable offence* on their part in visiting Mr. Tilak' s house. The reasoning which has been adopted by Government is charmingly simple. Mr. Tilak has been convicted of sedition, therefore he has been and must for ever be an enemy of British Government; and unless he modifies his principles or his propoganda he should be rigorously boycotted by every one who cares to enjoy the sunshine of Government favour or who is afraid of being regarded unfriendly to Government. A few years ago when the idea of Boycott of British goods was in the air Government officials used to declaim against it with the full gusto of a moral philosopher. It was said that the idea of boycott contained an element of hatred and was objectionable. It is surprising that Government should now themselves resort to a boycott, cowardly because it is aimed at a single individual, and aggravated by the worst elements of hatred. But we are not concerned with the salvation of the official soul. The more pertinent question is as to the encroachment by an official mandate upon the common rights of free citizenship; and we think public opinion will be unanimous in severely condemning the high-handed manner in which Government have been setting up a grotesquely exaggerated claim to teach people the false apotheosis of friendliness to Mr. Tilak or unfriendliness to Government. Government, by this time, must have learnt that, in spite of their wishes, thousands and thousands of people having no connection with Government have paid con-

gratulatory visits to Mr. Tilak; and if all such persons are, as the Government circular says, to be considered unfriendly to Government, the Bombay Government may now be said to have proclaimed their unpopularity by their own mouth. It seems the possibility of this interpretation of their conduct has entirely escaped the notice of Government in their eagerness to condemn Mr. Tilak and all kinds of association with him.

MR. TILAK'S JUBILEE*

NEVER had popular enthusiasm risen to such a high pitch as it reached on Sunday last when the day dawned to unfold the seventh decade of Mr. Tilak's life. It was a memorable day in every sense of the word. Sentiment and emotion have never been the forces which propelled the ship of public life in Maharashtra, but cool-headed and practical as our province is, it has never failed to do honour to its great men. The standard of greatness which our province has set to its leaders is high indeed, but Mr. Tilak has surpassed it and stands first amongst his peers. There have been not a few great personages whose memory our people cherish with respect, but there is hardly any other personality than that of Mr. Tilak who has touched the deep-seated and most responsive chord of the hearts of the people. There are always to be found persons who, despaired of winning the esteem of the people, seek to disparage the benefactors of the public. They call them "popularity-hunters;" but it is a language of spleen, malice, despair and ingratitude. Popularity, and especially abiding popularity, is neither cheap nor a chance. It comes only after the crucial test of honest, sustained and benevolent efforts. Therein lies the secret of Mr. Tilak's hold over the people. He loves his people, trusts his people, helps his people and actually suffers for his people. There is no sacrifice which he will not make for them, and no assistance which he will not render to further their cause. By espousing the popular cause he had nothing to gain, but everything to lose. For the sake of the

* From the *Mahratta* dated 30th July 1915

people, however, he risked everything—his prospects, his wealth, health, liberty and life. Anxiety and bodily privations have been his only portion during the last 35 years of his public career, and one might well throw out a challenge to name anybody who has passed through such a perilous ordeal. Yet none of Mr. Tilak's acts was done without the exercise of prudence and foresight; for Providence has blessed him with every manly virtue of which we all may be proud—a subtle intelligence, spotless private character, splendid public spirit and above all superb courage without which no merit can stand or endure. People have long known that during the protracted arduous struggle which Mr. Tilak waged, every danger that he braved and every hardship that he suffered was for their sake. To him it was a matter of duty which expected no reward. Their sense of gratitude, therefore, had long been pining for an adequate expression and was impatient to seize a suitable opportunity.

Enthusiasm waxes when hope is faintest. So it was with the people who had longed to express their appreciation of Mr. Tilak's services to his country. Nobody dreamt, least of all Mr. Tilak himself, that he would live to see the close of his sixtieth year. His health before his troubles began was excellent, and his frame robust; but it was beyond all reasonable expectation to hope that his body worn out by the afflictions of incarceration, persecution, calumny and disease could exhibit health and vigour enough to impel the people to hail the 1st day of his 61st year with indescribable joy. Even 20 years ago it seems that Mr. Tilak had some gloomy forebodings of his future troubles. In 1896 Mr. Tilak may be said to have reached the summit of his comforts. His trenchant criticism had won

for him the fame of an influential editor. His Law Class was in a prosperous condition and fetched a good earning. He was elected a member of the Bombay Legislation Council and a fellow of the Bombay University. The "Orion" had already obtained for him a niche in the pantheon of scholars and antiquarians. But Mr. Tilak was not born for such "cheap" gains. His mind was still not at ease, possibly because in an incredibly short space of time all the members, except himself, of that small band of noble patriots who at the inspiring example of Mr. Chiplunkar of blessed memory dedicated their life to the country, had been gathered with their forefathers. Mr. Chiplunkar was gone long before, but after him Messrs. Dharap, Apte, Kelkar (V. B.), Agarkar the great social reformer, and Mr. Namjoshi, a bosom friend of Mr. Tilak, had been seen to drop one by one—victims of premature death. It seemed ominous that all of them should have shuffled off their coil while on the threshold of forty. Imagine his distressed feelings, held in check only by his strong will, as, being a journalist, he had to write obituary notices of them all! He felt that possibly his end too was not far distant, and with his characteristic coolness was determined to see that he was not taken unawares. Just at the time Mr. N. C. Kelkar was summoned to join him. This was in March 1896. and in a letter to Mr. N. C. Kelkar, Mr. Tilak earnestly expressed himself by saying, "*I want in you not a servant, but a friend for the last days, it may be, of my life.*" This memorable and pithy sentence breathes a spirit of foresight and compresses a number of the noble traits of his character—his fidelity, determination, and generosity. It was impossible that melancholy should seize the faithful champion as he was, and alltrace of sadness was soon washed away in the

mighty wave of sacrifices which duty called upon him to make.

Time is not yet ripe for revealing the true causes that led to the events which in 1897 resulted in the prosecution of Mr. Tilak for sedition. He was sentenced to hard labour and during the early months of imprisonment his privations in the jail were of such a nature that it was feared that he would succumb. The people felt intensely for his sacrifice in their cause, and upon this rock of perpetual *suffering* and *self-denial* has been built the fortress of Mr. Tilak's popularity. After a year he was released, but ere long thereafter he was again involved in what is well-known as the *Tai Maharaj Case.* It began in 1901, and the first part of it closed in 1904, and the latter part as recently as in March 1905. It thus occupied fully 14 years, and was perhaps the longest and most excruciating period of intense mental agony, of bodily disease, of hardships, of another imprisonment and loss of thousands of Rupees. His reputation was at stake, his honesty was challenged, and his good faith was called into question. He however emerged triumphantly from the quagmire of distress, all the more serene, stainless and strong. So unflagging was his faith in his clear conscience that he found leisure to write "The Arctic Home," the monumental work of his antiquarian researches. Then came the Surat *debacle,* the political unrest, and the long period of his third incarceration. He was transported to Mandalay and again his life was despaired of. But a timely judiciousness evinced by Lord Sydenham secured for Mr. Tilak better treatment and the Mahratta world is richer to-day by another masterpiece of his literary genius, the *Gita-Rahasya,* which was written in the jail at Mandalay. The finest example of the

philosophy of sacrifice and suffering for duty's sake so zealously preached in the *Rahasya* finds its exemplar in the life of the author himself. A public life which began in 1880, overcoming so many temptations for money and power, which could not be deflected from the path of active duty even by the hardships of jail-life, and which would not rule the loss of money and domestic happiness, was the true life to which people looked for inspiration. It was Mr. Chiplunkar who infused the breath of patriotic life into the dry bones of Maharashtra, but it was reserved for Mr. Tilak to make it vocal, active and self-reliant.

Such is the man whom people longed to do homage to and such is the man they wanted to reward for his selfless services. Their ardour was naturally unbounded, for no body was sure if a suitable opportunity would ever occur. But when on 23rd July the day shone bright on his 61st year, the joy and alacrity of the public exceeded all expectations. About 8,000 people had assembled in the spacious court-yard of his residence to do honour to the great leader. The completion of the 60th year does not necessarily mark the close of active life. In a number of instances in England such as those of Mr. Gladstone, Lord Morley, Lord Beaconsfield and others, the period of public activity continued much longer. But unfortunately such is not the case in India. Here the educated class discloses a deplorable lack of vitality and longevity. In Dr. Dadabhai Naoroji and Dr. Bhandarkar we have agreeable exceptions but as a general rule notable leaders among the educated classes though not subjected to a life of corporeal hardships have found a comparatively early grave. Mr. Ranade died in his 59th year, Mr. Gokhale in his 50th and Mr. Telang much earlier. Sir Pherozeshah Mehta survived

them all, but his mental powers were much impaired in his closing years, and none of these personages, great though they were, had suffered from the buffets of adverse fate in a degree which it was the lot of Mr. Tilak to undergo. In Mr. Tilak we have witnessed the survival of the fittest and this fact enhanced the intensity of the rejoicings. The ceremony of the presentation of the address and the purse was unique indeed. Nothing like it had been witnessed before which resembled it in solemnity, grandeur and depth of feeling. A conscientious and courageous leader had at last found a grateful people. The purse was the embodiment of the infinite devotion of the people to their leader. Though it cannot be compared with the vast sums which were voted to Grattan and Parnell in Ireland, and to Wellington, Roberts and Kitchener in England, it has certainly surpassed any of its kind in India. Purses have been presented before to Mr. Robert Knight, Mr. Dadabhai and Mr. Bepin Chandra Pal. In England and Ireland public exchequer was made to bear the expenses, while in India it is the people who have voted the splendid sum, and in one of its features at least the purse presented to Mr. Tilak stands unmatched and unexcelled. It was only on 30th of June that the idea of making a substantial present first occurred to his friends who had informally assembled to consider the celebration of his Jubilee, and although the idea began on the 4th July to take the desired shape it was not made known outside Poona. Since that date the idea spread like veritable sunlight and such was the unison of hearts it aroused that within a week the fairly large sum of one lakh Rupees was subscribed by the middle classes only who alone constitute the Real People. Not a pie came from the pockets of aristocrats, plutocrats or their henchmen. The collec-

tion by the people of one Lakh of Rupees in *one week* is a fact which is unparallelled in the annals of modern India. It testifies to the single-minded devotion of the public to their trusted leader. Ever since the intention to present the purse was formally announced in the *Kesari*, subscriptions flowed in like anything and on the 23rd, the day of the ceremony, as many as 50,000 were collected in a single day, so that one full lakh was subscribed and the public felt a sort of satisfaction that they had done something in return for the unique services so honestly rendered.

Although the sum was voted for the benefit of Mr. Tilak himself, many of his friends had grave doubts as to whether he would accept it. In Europe, warriors, politicians and statesmen had always accepted the grants made to them from the public treasury, but East is East and West is West. Mr. Tilak could have gratefully accepted the offer, but he rose superior to the occasion and manifested self-abnegation of a wonderful character. He accepted the address but politely refused to accept the purse except on trust not for the benefit of himself but for the benefit of the People ! In an instant the lakh of Rupees which would have been the property of Mr. Tilak himself was converted into a nucleus from which a great National Fund might expand in the fullness of time. Mr. Tilak must derive some satisfaction that his labours and sufferings had to a certain extent borne fruit, and that the self-denying principles by which he has stood through thick and thin have been steadily permeating the influential section of the people. As pointed out by Mr. Gangadhar Rao Deshpande, these, which he called Tilak-principles, are the eternal principles by which liberty can be won peacefully in a comparatively short time. Mr. Tilak has stood boldly in

the face of every adverse wind, has borne the blows of misfortune with rare equanimity and has come out of his trials with a stronger will and firmer conviction in his ultimate victory. Let us therefore hope that the new troubles into which he has been launched will be successfully grappled with, and of him it may truly be said that "Good fortune crowned his efforts"—*Fortune Coronat Opus.*

THE POONA COURT OF WARDS *

THE Courts of Wards, as brought into being in this Presidency by Bombay Act I of 1905, have been working for the last ten years. But there has perhaps been no more flagrant instance of their mal-administration than the one furnished by the Court of Wards for the C. D., in the matter of the estate of the late Shri Baba Maharaj of Poona, succession to whom has been a matter of dispute and has obtained even public notoriety in the well-known Tai Maharaj Case. It happens that Mr. Bal Gangadhar Tilak is a party to that case, and Justice most often loses her track, wherever he is concerned, as if a red herring was drawn across her path. The Judgment of the Privy Council has now, as all India knows, set the question of adoption by Tai Maharaj and heirship to Baba Maharaj permanently at rest. But the Bombay Government is still persisting, with an obstinacy which is worthy of a better cause, in thwarting the course of Justice, and desperately attempting to keep the rightful claimant from coming into his own. Mr. Tilak patiently petitioned Government for over a year and a half to allow the Court of Wards to let things take their course. But he has to give up the royal remedy of petitioning in despair. A legal notice on behalf of the claimant was, therefore, given by his lawyers to Government in August last, and on the expiry of its period, they will be instructed to file a regular suit against Government solely in the interest of the estate. The matter will obviously be *sub-judice* after that event; and we therefore take an opportunity to tell our

* From the *Mahratta* dated 24th September 1916

readers how the Bombay Government have been behaving in a manifestly perverse manner under the colour of the Court of Wards Act.

We need not recount here the details of the litigation in the Tai Maharaj case. It will suffice for the reader's purpose to remember that in September 1903 Tai Maharaj, the adoptive mother of two boys, died; and as Mr. Tilak's suit for a declaration of the validity of the adoption of the Aurangabad boy was still pending in the Poona 1st Class Sub-Judge's Court, the Trustees of the estate applied to the Poona District Court to take charge of the estate under section 9 of Regulation VIII of 1827. The District Judge held it was necessary to make some such arrangements for the management of the property "*until the claims of the rival litigants had been definitely decided.*" He accordingly appointed the Collectors of Poona, Satara and Belgaum administrators of the immoveable property lying within their Districts, and the Court Nazir administrator of the moveable property in Poona. The Kolhapur boy was given some ornaments by Tai Maharaja and he was allowed to keep them on furnishing security.

Two years later the Court of Wards Act was passed; and the Court of Wards for the C. D., acting through the Poona Collector, applied in January 1907 to the District Court to allow the estate, already held by him and other Collectors under Regulation VIII of 1827, to be thereafter held by the Court of Wards, alleging as a reason that the estate was encumbered with debts and that the assumption of the estate by the Court of Wards is necessary to have it economically managed. The District Court seeing that the litigation was still pending and might be prolonged granted the application on 1st of August 1908. This change of capacity in

which the Collector of Poona held the estate should admittedly have led to nothing except a more economical management. And for a time it did *look* like economical management. The Collector proceeded to ascertain the debts of the estate; and in response to the public notice issued by him for the purpose, lists of claims amounting to about two lakhs of rupees were filed before him by the different creditors of the estate. But the animus against Mr. Tilak had already begun to work. In the public notice referred to above, the estate was described as Tai Maharaj's estate, whereas it was the estate of her husband Baba Maharaj. On the mistake being pointed out, the Court of Wards had to cancel the wrong notification; but the right one was never substituted in its place. The blank was continued till 1912 when the Bombay High Court having upset the judgment of the lower Court in Mr. Tilak's favour, Bala Maharaj i.e., the Kolhapur boy, applied to the Court of Wards for a declaration that the estate held by the Court of Wards was his estate and be held on his behalf. The Court of Wards, acting under orders of Government, readily agreed to this, notwithstanding the protests of Mr. Tilak's lawyers; and a G. R. dated 14th October 1912 was issued accordingly. An appeal was lodged before Government against this on behalf of Mr. Tilak who was now in jail; but in January 1913 the appeal was rejected. The reason shown by Government was that Bala Maharaja had been now declared the validly adopted boy. But this contention was not *bona fide*, because if the declaration of the validity of adoption was the deciding factor of action, the Court of Wards should have made a declaration of holding the estate on behalf of the Aurangabad boy also as soon as the First Class Sub-judge's Court declared his adoption as valid

in 1906, at least in 1907 when the Court of Wards was finally constituted. Further, the Judgment of the Privy Council in 1914 at any rate has now set a seal on the validity of the Aurangabad adoption and definitely put an end to all civil litigation in the matter. And the Court of Wards, if it were acting *bona fide*, would have at once made a fresh declaration that it was holding the estate on behalf of the Aurangabad boy. But not only did the Court of Wards not do this of its own motion, but it paid no heed to Mr. Tilak's repeated petitions for setting the matter right. The purpose of the original transfer of the custody of the estate from the Trustees to the Collector under orders of the District Court having been served by a lawful adoption being declared by the highest Court of Judgment in the realm, the Court of Wards should have given back the estate into the hands of the Trustees. But there was *a Tilak in this case,* and for the sake of spiting him Government have apparently intended to render the judgment of the Privy Council null and void by a petty practical stratagem.

The action of the Court of Wards has been most high-handed throughout. Petition after petition and protest after protest was made by Mr. Tilak, but the Court of Wards gave no sign of fair dealing. It sat serene and motionless so far as Mr. Tilak was concerned behind the fortification of the Court of Wards Act. But it was otherwise towards the boy whose adoption Government had favoured all along for political reasons. The ornaments which formed a valuable part of the estate were all along allowed to remain with the Kolhapur boy. A kind of security was taken from him for these ornaments but no one knows what valuation has been put upon them officially. The Kolhapur boy, it should be remembered again, was allowed to enjoy the profits of the Kolha-

pur portion of the estate without any let or hindrance. The Kolhapur estate is more than a third of the whole estate; and a conscientious Court of Wards would have taken energetic steps to have that estate attached through the agency of the British Government, who are by treaty a surety for the peaceful enjoyment of the suit estate in Kolhapur by the lawful representative of the family. Then again the Kolhapur boy was allowed to occupy the family house in Poona even after his adoption was declared invalid.

But there are charges against the Court of Wards much more serious than the above. The first is that the Kolhapur boy was given moneys out of the estate to carry on his litigation. It is true that this was done after the High Court reversed the decree of the 1st Class Sub-judge's Court. But then Mr. Tilak's appeal to the Privy Council had already been lodged and he had given the Court of Wards distinct notice of the appeal, and a caution that the Court of Wards ought to treat the rival claims as still undecided. The Kolhapur boy had already been in possession of an income of some ten-thousand rupees since 1901. The Court of Wards made no attempt to prevent that loss to the estate, and again paid a sum of fifteen thousand rupees to him to enable him to fight his case in the Privy Council against Mr. Tilak. And now that the Privy Council has confirmed the First Class Sub-judge's decree, the action of the Court of Wards becomes culpable, and the money given to the Kolhapur boy has got to be refunded by Government if it cannot be recovered from the Kolhapur boy.

More serious still is the action of the Court of Wards in dealing with the debts of the estate. The very purpose of the Court of Wards is preservation of estates and their economical management. But the Court of

Wards in this case did nothing beyond calling for claim of creditors by a public notice, which again was never given in the right spirit or the right words. No steps were taken to ascertain the debts, much less to repay them, or decrease the burden of interest. The estate was being preserved in the only sense that there being no claimant with a finally decided title for a long time, no expenditure had to be incurred for the maintenance of the person or the position and dignity of a successor to Baba Maharaj, and for all these years there was naturally only one side open to the account, viz., credit side. But though the expenses for the Ward himself were nil, and Mr. Tilak himself had been bearing the expenses of the maintenance and the education of the Aurangabad boy for these 15 years—and even after the Privy Council Judgment—the debts against the estate were being accumulated. To give an idea of these debts we may give here a few figures. The debts at the time of Baba Maharaj's death in 1897 amounted to about a lakh and a half. Till 1901 the trustees managed to reduce the liability on the estate by substituting debts carrying a higher interest by debts carrying a lower interest. The amount of the debts at the time the Collector took up the administration of the estate in 1903 was nearly the same. During the last 13 years the Court of Wards has repaid only one debt, viz., that due to the local Anandashram managed by Mr. H. N. Apte. This was a case of undue preference, as other liabilities also were running at the time against the estate. In fact actual decrees amounting to about eighty-thousand rupees had been already given against the estate, and interest at the rate of 6% was being accumulated over the decretal amount. And yet not only no steps were taken to repay these debts, but

active opposition was offered by the Court of Wards to the creditors trying to get the decrees executed. The Collector and the Court of Wards were practically one, and this identity was abused for obstructing the process of law instead of facilitating it. The genius of the Court of Wards for economical management has been further exhibited by its investing the accumulated income of the estate in depreciated stock carrying 3½ per cent when interest at 6% was being accumulated against the estate under Court decrees. All this has been done under the orders of the Bombay Government; in fact, we know nothing of the kind would have been done if the Court of Wards had been allowed to do business in due course by Government without active and gratuitous interference. Naturally and by the Government's own choice and doing, the responsibility for *mala fides* and *mal*-administration rests entirely with the Government and not the Court of Wards which has been all along acting only under orders. And it now remains to see how Government would, in case it persists in its fatuitous course, justify all this conduct in a Civil Court.

TILAK AND THE LAW OF SEDITION*

> "Give me but the liberty of the Press; and I will give the Minister a venal House of Peers, I will give him a corrupt and a servile House of Commons, I will give him the full swing of the patronage of office, I will give him the whole host of ministerial influence, will give him all the power that place can confer upon him to purchase submission and overawe resistance; and yet armed with the *liberty of the Press* I will go forth to meet him undismayed. I will attack the mighty fabric he has reared with that mightier engine, and lay it beneath the ruins of the abuses it was meant to shelter."

SO said Sheridan on the 6th of February 1810 in a memorable debate in the House of Commons. And a tribune of the people in India may, I think, utter the very same words today without being guilty of any boastful exaggeration. The Press in India has already achieved much; but it may aspire to achieve still more, by way of influencing and even dominating government, *provided its liberty is some how maintained.* And I use the word *Press* here in a wider sense, as representing a whole class, of the means of expression of political opinion, including its equally powerful ally—the platform. The law of sedition in India makes no difference or distinction between the spoken and the written word. For the words of section 124 A of the Indian Penal Code are:

"Whoever by *words either spoken or written or by signs* or by visible representation or otherwise, brings or at-

*Introduction to a book published in 1916, containing proceedings in the Tilak Case (1916).

tempts to bring into hatred or contempt or excites or attempts to excite disaffection towards Her Majesty or *the Government* as established by law shall be punished etc."

The tentacles of this octopian law of sedition, it will be observed, can reach the spoken as well as the written word with the same fatal ease. And Government on their part have never shown any inclination to discriminate between the two; though they should have been fair-minded enough to discern that a very large amount of allowance ought to be made for a speech which may not be made for a writing, for the simple reason that speech is always naturally, and often even by the very needs of the case, more spontaneous, more unguarded and less deliberate than writing. During the present epidemic of prosecutions for sedition, which has lasted with unabated vigour for now nearly ten years, Government have sought to incriminate and punish, with the same standard of law and the same gusto of animus, a casual conversation between chance passengers in a lonely railway compartment and a blood-thirsty declamation in a secretly circulated newspaper. Only one broad objective test has been applied in dealing with incriminating words; and though the mere technique of the law of sedition has varied, so far as actual results are concerned, the spirit of the suppression of public opinion has ever and everywhere been the same. The Penal Code as operated through the Sessions Court, the Criminal Procedure Code as applied through the Magistracy, and the Press Act as administered by the agency of the executive Government, are merely different forms of sensational illumination falling under the same department of 'repressive fire-works'.

British rulers having undertaken in India the task and the responsibility of political government, in all serious-

ness and for an indeterminate period of time, it was inevitable that they should arm themselves with the necessary powers of dealing with political hostility with a suitable substantive law and procedure. But in the earlier years of their rule the purpose was well served by the enactment of some very crude Regulations, which provided a rough and ready method of physically dealing with inconvenient opponents who might threaten to be dangerous. An occasional cheque, drawn on the plenary powers of the State, was calculated to meet the exigencies of an outburst of sedition ; and the deportation of hostile editors and agitators, of whom however there could then be but few, enabled Government to restore the even tenor of their administration without so much as provoking any audible murmur of public criticism.

Later on the criminal Law of India, which immensely varied in its provisions as well as administration in the various provinces, was codified in 1837 under the orders of the East India Company, by a Law Commission of which Lord Macaulay was the Chairman. That code for the first time made Sedition as such a distinct offence. The provision was embodied in section 113 of the draft Penal Code which ran as follows :

"Whoever by words either spoken or intended to be read, or by signs or by visible representations, attempts to excite feelings of disaffection to the Government established by law in the territories of the E. I. Company among any class of people who live under that Government, shall be punished with banishment for life or for any term, etc."

Explanation.—Such a disapprobation of the measures of Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the

Government against unlawful attempts to subvert or that authority, is not disaffection. Therefore the comments on the measures of the Government, with the intention of *exciting only this species of disapprobation*, is not an offence within this clause.

The clause was intended to import into India substantially the same law of sedition as it existed in England. The merits and demerits of the clause were deliberated upon among the members of another Law Commission in 1846; some members objecting to the wording, even such as it was, as very vague and severe, and others interpreting it as a direct attack on the public press in India. One member, Mr. Cochrane, regarded the words of the explanation as of a "very dangerous tendency and calculated to place men's rights and liberties in the discretion of each particular Judge."

The majority of the Law Commission were, however, satisfied that they had, by the words as they were, taken proper precaution against too wide a use of the word "disaffection." The explanation, in their opinion, pretty well guided and limited the discretion of the Judge.

If so happened, however, that even this clause 113 was somehow omitted from the Penal Code when it was actually enacted in 1860. If a C. I. D. had been then in existence it might have reported, *when* called upon for a report, that this omission of the single provision against sedition in the process of a draft code being copied and enacted into a *Pucca* Code, was due to the corrupt working of the emissaries belonging to the secret service in the pay of the Bengali or Deccani sedition-mongers. But the omission was a fact, however unaccountable. Ten years later, the omission was noticed and made good by the enactment of section 124A of the Penal Code which purported to embody substantially the same

provision as was contained in clause 113 of Macaulay's draft. This amendment of the Code was hotly debated and contested on the ground that the times were peaceful and the people thoroughly loyal. The opponents also urged that the word *disaffection* was a very vague word; and might lead to malicious prosecutions; also that the enactment would curtail the liberty of the press. The Hon. Mr. (afterwards Sir) James Fitz-James Stephen, the then Law member of the Government of India, tried at great length to reply to these objections. And though the proposed amendment of the Penal Code was eventually carried, the admissions made and the assurances given by the Law member at the time had a great value as indicating the real policy of Government at the time, and a peculiar and accentuated value at this distance of time, in view of the changes which the law of sedition has since undergone both in the interpretation of the old and the enactment of the new words of penal provision.

We have no space to set out the whole body of the observations, made in self-defence, by the Hon. Mr. Fitz-James Stephen. But the gist of it all was as follows:

"Let it be shown that the matter complained of was not consistent with a disposition to obey the law; let it be shown that it was consistent only with a disposition to resist the law by force and it did fall under this section. Otherwise not."

"You may create disapprobation as much as you please, so long as it is consistent with a disposition to render obediecne to the lawful authority of Government."

"This (Sec. 124 A) was a weapen to be used in no case except when the peace of the country was, in the opinion of those who were at the head of the Government, seriously endangered."

The question was not whether the press ought or

ought not to be free but whether it ought to be free *to excite rebellion.*

"They might not say anything of which the obvious intention was to produce rebellion."

"As explained in the light of the above qualifications and limitations as to words, and statements as to intention, the Section, which was eventually embodied in the Code as 124 A, ran as follows:

"Whoever by words either spoken or intended to be read or by signs or by visible representation or otherwise, excites or attempts to excite feelings of disaffection towards the Government established by law in British India shall be punished with transportations for life or for any term, etc.

Explanation—Such a disapprobation of the measures of Government as is compatible with a *disposition to tender obedience to the lawful authority* of the Government against unlawful attempts to subvert or resist that authority is not disaffection. Therefore the making of comments on the measures of Government with the intention of exciting *only this species of disapprobation* is not an offence within this clause."

For 21 years since its enactment, there was no occasion for the use of this provision of the law of sedition. The *Bangabasi* case in 1891 was the first trial for sedition in India. In that case Sir Comer Petheram, Chief Justice of the Calcutta High Court, interpreted the words *disaffection* only as originally intended by Macaulay and Fitz-James Stephen. His Lordship observed:

"Disaffection means a feeling contrary to affection, in other words dislike or hatred."

"If a person uses words calculated to create in the minds of the persons to whom they are addressed not to obey the lawful authority of the Government or to

subvert or to resist that authority, if and when occasion would arise, and if he does so with the intention of creating such a disposition in his hearers, or readers, he will be guilty of the offence though no disturbance is brought about or any feeling of disaffection is produced by him."

The Tilak case in 1897 was the second case under section 124 A. In that case the presiding Judge, Mr. Strachey, introduced for the first time a cycle of mutations in the meaning of the particular word "disaffection" and the general spirit of the law of sedition, which cycle has apparently not yet wholly terminated. Mr. Strachey interpreted the word disaffection as meaning "want of affection"—a negative instead of a positive state of mind, *viz.*, ill-will towards Government.

On an application being made on behalf of Mr. Tilak to the full Bench of the Bombay High Court, for leave to appeal to the Privy Council on the ground of misdirection of the charge to the Jury, as contained, among other things, in the misinterpretation of the word "disaffection," their Lordships admitted that Mr. Justice Strachey had used the words "want of affection," and also that the phrase would have misled the Jury if it had stood alone. But they specially pleaded that taken in connection with the context it could not have misled the Jury. The summing up of the Judge, they said, would have been absolutely correct, if Mr. Justice Strachey had used the very words used by C. J. Sir Comer Petheram before, *viz.*, "contrary to affection" instead of "absence of affection." But "taken in connection with the context, it was clear that by absence of affection the Judge did not mean the negation of affection but some active sentiment on the other side." For that reason their Lordships refused to certify the case as a fit one to go in appeal to the

Privy Council. The case was all the same actually taken in appeal to the Privy Council for Mr. Tilak independently, but the appeal was rejected on the ground of their being no such substantial misdirection of the charge to the Jury as to warrant a reversal of the Judgment of conviction.

The law of sedition as contained in 124A. I.P.C. had, however, a more busy and a more lively time of it during the course of the same year. Quite a number of cases of prosecution for sedition cropped up apace, thanks to the combined energy of the Political and the Legal departments of Government; and amusing was the welter of the differences of opinion in which the different High Courts in India found or landed themselves in, while honestly trying to correctly interpret the same words of the same section. The Allahabad High Court, followed Mr. Strachey in one case, but in another case Ranade and Parsons J.J. substantially differed from him.

Taking advantage of this state of things, Government decided to widen the sedition law. The Legislature naturally comes in to clear up meanings and standardise interpretations. But this legitimate function can, as was seen in this particular case, be abused for another and an ulterior purpose. In December 1897, the Hon. Mr. Chalmers, the then Law Member of the Government of India, introduced a Bill in the Supreme Legislative Council, for amending Section 124 A. I. P. C. The aim and object of the amendment professed to be to clear up ambiguities in the meaning of the old section and to bring it in still greater conformity with the Criminal Law of England on the subject. This was sought to be done by wording the section as follows:

"Whoever . . . brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffec-

tion towards Her Majesty or the Government . . . may be punished, etc."

Expl. I—The expression Disaffection includes disloyalty and all feelings of enmity or ill-will.

Expl. II—Comments on the measures of Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence.

In the Select Committee the original wording "Government established by law" was restored in order to bring it in conformity with the wording of 1870. The words "(all feelings) of *ill-will*" were omitted as too wide and vague. The Committee observed that "it is only when feelings of *ill-will* amount to disloyalty or enmity that they constitute disaffection. *A certain amount of ill-will is compatible with genuine loyalty.*" And the amendment so far modified was eventually passed.

The net result, however, was highly reactionary. Far from the definition of disaffection being made more clear than before, it only widened the connotation of that word by the addition of such strong words as hatred or contempt as explaning rather than limiting or modifying the sense of the word, disaffection. Whereas a feeling of disaffection should have been explained or even defined as a "feeling incompatible with a disposition to render obedience to the lawful authority of Government," the new amendment of the section unnecessarily imported such misleading and vague words as hatred, comtempt and enmity.

Secondly, the amendment carried away the Indian law of sedition further than before from the English law on the same subject. And for the following reasons according to the English Law:

(1) The words used must be *calculated* to disturb the

tranquillity of the State or lead people to subvert Government or the Law.

(2) They must be used with the *intention* of disturbing such tranquillity, etc. The likelihood and the intention of the use of force is thus an essential element of the offence in the English Law.

It has fallen to the lot of Mr. B. G. Tilak, more than any body else in India, to tempt and test the law of sedition, and his contributions to the records of state trials in British India, though unwilling, have been of much importance. The present was his third trial for sedition; and though Mr. Tilak has come out successful only this time, his defences on all the three occasions laid daring hands on the very foundations of the law of sedition as embedded in particular words. It is now notorious that in his first prosecution in 1897 the Jury could not be relied upon convicting him unless the learned Judge, presiding over the sessions, actually over-stretched the natural meaning of certain words of sections 124 A. Mr. Justice Strachey himself admitted that "absence of affection" was not a fortunate phrase to use, in explaining the meaning of the word 'disaffection.' (22 Bom. p. 148). And though Mr. Tilak's conviction based on such an interpretation was allowed to stand, so far as the law itself was concerned, Farran, C. J., ruled later on that "disaffection" meant a positive feeling implying political alienation or discontent, a spirit of disloyalty to Government or existing authority (22 Bom. p. 126).

The amended law of sedition was tested by Mr. Tilak in 1908 when he was convicted by a Jury, divided as 6 to 3, for certain articles in the "*Kesari*" newspaper. Mr. Tilak in his defence laid great stress on the point that as there was no proof of excitement or disturbance actually stirred up by himself, he could be charged only

with an attempt to excite disaffection; but a criminal attempt presupposes a criminal intention which the prosecution failed to prove against him. The articles in question were written mainly as a reply in a controversy to Anglo-Indian and other papers, who held the newspapers and the politicians in the country responsible for the inauguration of an era of bombs and violence in India, whereas Government were really responsible for the same by reason of their mal-administration, and that the only real and abiding remedy was the granting of substantial political reforms. The presiding Judge, however, gave the go-by almost completely to the discussion of law, and directed the Jury to hold the accused guilty if the words actually used were likely to cause disaffection.

Once more was Mr. Tilak destined to be a touch-stone for testing the law of sedition, as embodied in the present section 124 A. It is necessary to make a few observations bearing on the peculiar feature of success which distinguishes the third Tilak trial from the first two.

Those who witnessed the Tilak trial in 1908 and those who were present at the proceedings against him in 1916 could not but feel the great contrast between the two situations. The Government were evidently in a terrible mood then; and the close and stuffy atmosphere itself in the dingy room of the High Court was surcharged with emotional electricity. We wonder if the imagination of some people did not show them bombs hanging from the ceiling or pistols stuck up on the walls of the Court House! The friends of Mr. Tilak could see nothing but the unseen Andaman Islands, or the penal settlement of Port Blair. People who had not read the Penal Code might have even thought that on conviction

Mr. Tilak might be blown of from the canon's mouth. It was time when the habitually merry became serious, and the habitually serious dazed and awe-stricken.

It was all changed this time. The very choice of the method, made by Government, of proceeding against Mr. Tilak, at once brought down the thermometer of feeling to the temperate point. The worst consequences would be but the mildest ever experienced by Mr. Tilak at the hands of Government. The proceedings being of a preventive nature, conviction might, on the other hand, be far easier to secure than if it were a case of a regular prosecution. It is the accused that should get the benefit of doubt; here the cast of the proceedings was such that the Prosecution itself might claim that much needed benefit. One good turn brings another; and if Government showed leniency to Mr. Tilak in his old age, why should not the people show similar leniency to Government, in their hour of need, in judging them for the error of taking action in a manifestly weak cause. It may be egregious but at any rate not scandalous.

Well, proceeding to consider the judgments in this case, the readers will perceive that the District Magistrate has fallen into the same mistake as Mr. Justice Stachey 19 years ago, *viz.*, holding disaffection as equivalent merely to "absence of affection." Apparently District Magistrates in India, like the Bourbons of France, learn nothing and forget nothing; nothing that is convenient to them as agents and instruments of the executive Government—though called upon to apply their mind to a case before them in a strictly judicial spirit. The Poona District Magistrate curiously enough remembered only the mis-interpretation, by Mr. Justice Strachey, of the word Disaffection, though Mr. Strachey had himself afterwards withdrawn the unfortunate inter-

pretation and a Full Bench of the Court apologetically discounted it away.

As for the High Court Judgment, it is obvious that their Lordships treated the centre of gravity of the whole matter as lying on the side of facts rather than that of law. In fact, Batchelor J. says: "In my opinion the application does not give rise to any real question of law." Their Lordships contented themselves with the conclusion that as a matter of fact the speeches of Mr. Tilak, taken as a whole, did not amount to sedition, though an expression here or there may be harsh, discourteous or insulting in a personal sense. Similarly, Shah J. contented himself with saying that whether in a particular case the condemnation of a service under Government was sufficient to excite hatred, contempt or disaffection towards Government must depend upon the nature of the criticism, the position of the service and all the circumstances of the case, and that in the circumstances of this particular case his lordship had no doubt that the speeches of Mr. Tilak taken together and as a whole did not overstep the limit of law.

Mr. Tilak has thus scored a personal triumph upon Government, who could not resist the temptation, in a moment of irritation, of rushing into the Law Court to silence him once more by the use of a familiar weapon, viz., conviction for sedition. The facts of the situation, as we have pointed out above, this time weighed in his favour. But the position with regard to the Law of Sedition in India is by no means cheerful. And in view of the growing need for political agitation in this country, we cannot afford to relax, notwithstanding Mr. Tilak's success in this particular case, our efforts to get the law of sedition so modified as to ensure, beyond all doubt, the liberty of the expression of political opinion,

provided always that there is on the part of the writer or speaker no attempt to excite the use of unlawful force or the subversion of Government. And in fact it is only with this object of pointedly bringing to the attention of our readers the perilous situation in which political speakers and writers stand at present in view of the existing law of sedition, that we have traced at some length the history of that law since the beginning of codified legislation in this country.

A careful perusal of that history will show that whereas we ought to have in India the same law of sedition as obtains in England, and whereas the drafting of the early legislators in India did professedly and unmistakably point to bringing about this very result, a reactionary tendency has set in, in the meantime; and we have now actually a law of sedition which imposes uncertain but certainly very rigorous limitations upon political discussion or propagandism. We have already referred in passing to the distinction between the English and the Indian law of Sedition. But we shall do so here at some length in order to point out the salient features of that distinction, which in their turn may suggest the lines of the needed reform.

Sedition, under the old English Common Law Statutes, fell under the general heading Treason. It was now here clearly defined but was classed as a contempt and misprison against the King and the Government, and it could be committed in a variety of ways, some of them even very fanciful, e.g., a curse inwardly uttered against the King. Sedition might indeed under special circumstances be exalted to Treason. But ordinarily it was supposed to be of two kinds: (1) Popular commotion obstruction of law, or breach of public tranquillity not directed against the constitution, nor amounting to Trea-

son ; and (2) Mere Libel with of course a seditious intention. Sections 901 and 902 of Lord Halsbury's Laws of England State the principles of the preset law obtaining in England on the subject. Section 901 deals with Seditious Conspiracy, and 902 with Seditious Libel. We shall quote only the latter as enough for the present purpose. It runs as follows:—

"Every person is guilty of the Common Law misdemeanour of Seditious Libel, if with *Seditious intention* he either speaks and publishes any words or publishes a libel."

"The freest public discussion, comment, criticism and censure either at meetings or in the press in relation to all political or party questions, all public acts of the Crown, all acts of the Government and all proceedings of Courts of Justice are permissible ; and no narrow construction is to be put upon the expressions used in such a discussion, etc. But the criticism and censure must be without malignity and must not impute corrupt or malicious motives.

"If the words, however defamatory, were not spoken with a seditious intention, the defendant is not guilty, such an intention being the essence of the offence. But the character of the words may form irresistible evidence of the nature of the intention.'

These principles are authoritatively stated in Stephen's Digest of the Criminal Law of England. And the *original* section 124A of the Indian Penal Code naturally bears a resemblance to the provisions of the English Law of Sedition, because the author of the English Digest was also the framer of section 124A as enacted in India in 1870. This resemblance is noted by Mr. Justice Ranade in the case of R. V. S. Ramachadra Narayan, I. L. R. 22 Bom. p. 152.

The points in favour of the English Law will be apparent from the following :--

(1) In England sedition is not an offence if the words are only orally uttered or spoken. Publication of these words is essential. This is not a merely technical advantage, for it gives sponatenous utterances, as in the case of speeches or lectures, the protection whch they deserve.

(2) In England the truth of the words *published* can be a justification, unless they refer to the King personally. This is the substantial advantage because a seditious libel must first of all be a libel; i. e., a *false* statement, so that if the words complained of could be proved to be true, one essential element in the offence would disappear. In India truth is no justification if the words have a tendency to excite certain feelings against Government.

(3) In England seditious *intention* is absolutely necessary; and it follows that the prosecution must bear the burden of proving it, though it could take the assistance in this respect, to a certain extent, from the character of the words. In the leading case of R. V. Burns on this subject, Mr. Justice Cave has authoritatively laid down that though a man may be presumed to intend the natural consequences of his action, yet "it is very proper for a Jury to infer if there is nothing to show to the contrary. If it is shown from other circumstances that he did not actually intend them, I do not see how you can as a jury act upon what has become a fiction with regard to this matter." Stephen J. has stated clearly that it is one thing to write or speak with a distinct intention to produce disturbances, and another to write or speak violently and recklessly matter likely to produce disturbance. The Jury accordingly returned a verdict of not

guilty. And we may as well mention in this connection that Stephen J. who laid down this law, and who introduced the original section 124A in the Penal Code, is considered the greatest authority in England upon Criminal Law. In the words of Justice Cave, "Justice Stephen possessed undoubtedly a greater knowledge of criminal Law than any other judge who sat upon the Bench."

(4) In England words uttered must be *calculated to produce unlawful use of force.* In R. V. Collins, it has been held that nothing short of direct incitement to disorder and violence is a seditious libel. In the case of R. V. O'connell, even the fact that "meetings had been held for the purpose of obtaining changes in the Government and the constitution of the realm, by means of the exhibition and demonstration of great physical force" was not held to be a good ground for conviction for sedition. So also in the case of R. V. Sullivan and Piggot, Fitzerald J. observed: "The indictment for sedition must state *acts*, the overt or open acts, by which seditious intent was evidenced." In short from 1820 to 1886 the English rulings are entirely unanimous and consistent in holding that the alleged seditious words must be *calculated to disturb the tranquillity and incite to use of force, or to subvert Government.*

According to the present section 124A the prosecution need not show criminal intent but only a particular objective character of the words used, even with reference to surrounding circumstances which may have been far from the mind of the accused.

(5) In England the offence of seditious libel can be committed only with reference to Government established by law, much the same as in India. But there a much more liberal interpretation seems to be put upon

the words than it is done in India. In the present case against Mr. Tilak a good deal of discussion has taken place as to the exact meaning to be attached to that phrase. But even the High Court, deciding the case as it did upon facts rather than on law, has left the interpretation of the phrase almost where it was before. In the case of the *Morning Chronicle* in England which attacked the system of Government and demanded a change in it, Lord Ellenbourough directed the jury to put an innocent interpretation upon it. "A total change of system" did not mean, it was held, "Subversion of Government" and therefore no sedition. But it still remains doubtful in India whether departments of Government or even particular services, could be attacked and freely criticised, lest they might be held to be the Government established in India. Even a policeman or a village Talati may, in that view, claim the same privilege of immunity from criticism as the Viceroy himself, on the ground that he is as much an integral part of the Government established by law as the other.

(6) Perhaps the most important difference between the condition of things in England and in India with regard to the law of sedition lies in the fact that, while in England the last word as to the guilt or the innocence of a person charged with sedition remains with a *Jury*, that in India remains with a Judge, who may be according to the amendment of the Criminal Law in 1898, even a Magistrate. The Jury has always been a great bulwark of strength to public speakers and writers in England; and under the same conditions it is likely to be so also in India. Even in England the right of trial by Jury could not be successfully asserted for a long time. The censorship of opinion was regarded as part of the prerogative of the Crown; and while printing was

restricted by patents and monopolies and stamp duties, speech was restricted by an elastic and uncertain law of sedition which vaguely made "speaking ill of Government a crime." No grand jury stood between the Attorney-General and the defendants, and even the Courts were ready instruments of the Government. This position had to be fought inch by inch, and bold martyrs among the men of the press and the platform, aided by the Juries themselves in the box, put up a vigorous and unrelenting fight till, by Mr. Fox's Libel Act of 1792, it was declared that the Jury had the exclusive right to pronounce upon the guilt or the innocence of an alleged seditious libel.

In India, we are still under the thraldom of individual Judges and even Magistrates, and the public as such have no voice whatever in standardising the liberty of opinion, as they would have if cases of sedition were made exclusively triable by Juries.

The amendment of the Criminal Law, as made in 1898 at the instance of the Hon. Mr. Chalmers, thus brings down the liberty of political opinion in India to its narrowest dimensions, under pressure from all sides, viz., definition of the offence as well as the machinery of administration. Lord Lytton while inaugurating the Press Law in 1878 claimed that it was a mild substitute for a Law of Sedition. By 1891 the Press Law was no more; and the Hon. Mr. Chalmers pleaded in support of his amendment of the Penal Code that Government did not want to re-enact a Press Law for India. But thanks to the triumph of the spirit of reaction in India, we have now the combined blessings of both the amended Penal Code and the Press Law together, lending support to each other. Professing to give us a Criminal Law like that of England, Mr. Chalmers has given us the fullest

dose of the poison of the Law of Sedition, withholding from us its antedote, *viz.*, trial by Jury. It is obvious, therefore, that a suitable amendment of the Criminal Law of India must be put at the top of the schedule of the political reforms that we shall demand at the end of war. For with the liberty of the expression of political opinion, we can, even in India, achieve the same results as in England with regard to the reform of our administration; or, to quote Sheridan at the end, as we have done in the beginning, we shall meet the government undismayed, and lay it beneath the ruins of abuses which the bureaucratic form of government is meant to shelter.

TILAK AND THE HOME RULE MOVEMENT*

SO far as Mr. Tilak is concerned, there has been always only one movement and only one law. The movement is the movement of Swarajya; and the law the law of sedition. In both these, Mr. Tilak has created epochs. He is the one acknowledged leader of the Swarajya movement, and the last ten or twelve years of the history of Self-Government in India may be called the Tilak-Epoch. Similar is the case with regard to the history of the law of sedition in India. The epoch in that respect too may fitly be called the Tilak-Epoch. Mr. Tilak's pursuit of Swarajya and the Government's quest of the ideal refinement of the law of sedition have been all along running a closely parallel course. They could not of course thus go on indefinitely without ever meeting and intersecting each other. Thrice did the impact take place; and on the first two occasions Mr. Tilak received injuries of a serious character. At the end of even his reduced term of imprisonment in 1898, Mr. Tilak came back from the jail a mere shadow and a skeleton of his own self. At Mandalay, on his second conviction, between 1908 and 1914, he was given up for lost; for transportation for six years at an advanced age on the wrong side of 50 is no joke. But on both the occasions the movement gained considerably by his sufferings. What Mr. Tilak spoke in reply to Mr. Justice Davar on his conviction at the Bombay High Court on the 22nd of July 1908 was no mere boast or bravado. He had known by his experience before that the blood of the martyr is the seed even of the political church. His words were:

* From the *Mahratta* dated 19th November 1916

"In spite of the verdict of the Jury, I maintain that I am innocent. There are higher powers than this tribunal, which rule the destinies of mankind, and I believe that the cause which I represent will prosper more by my suffering than by my remaining free."

Mr. Tilak did not want to use these words as a missile thrown at his Judge to hurt him in revenge, as some desperate criminals are found to do in the paroxysm of despair. Mr. Tilak's words were a missile intended to be used impersonally and to reach much farther than the High Court Bench. The quarrel was not so much a judicial as a political one. It lay not between Mr. Tilak and the Judge, but between him and Government. And in return for the awefully serious trouble they had created for him he was entitled to retort and tell them that all their efforts to break him, and much more so the movement of Swarajya through him, were of no avail. And in the result his words have come out true. Mr. Tilak's fame, as a nationalist patriot, or even his notoriety according to the epithet chosen by his enemies, has been greatly augmented by his sufferings. And now on the third occasion Mr. Tilak has not only turned the tables and won in the new struggle, but has in a way received ample compensation from the impetus which the High Court Judgment is bound to give to the Swarajya movement. And for this result Government have to thank themselves. They can blame neither Mr. Tilak nor the High Court. As for Mr. Tilak, his speeches were only in the ordinary and natural course of his advocacy of the Swarajya. And as for the High Court, their Lordships have done only their duty of applying the law to the facts before them. Government cannot even for a moment suggest that their Lordships were in any way partial to Mr. Tilak or prejudiced against Government. On the

contrary, reading between the lines of the text of the judgments, one can clearly see that their Lordships have been unwillingly compelled to decide the case as they have done, notwithstanding their mental disagreement with Mr. Tilak so far as the political aspect of the speeches was concerned. The only conclusion to be drawn is that the real error lay with Bombay Government, especially with those particular members of the Council who persisted in proceedings being taken against Mr. Tilak for these speeches. We don't know, but Dame Rumour says that Government were advised against the course taken, not only by certain non-official but also certain official advisers. But unfortunately at the official headquarters, only the opinions which are adverse to Mr. Tilak in any matter count or prevail; and it was so evidently in this case also. But this time Nemesis apparently took a fancy to give a counter-stroke; and the Bombay Government have been hoist with their own petard. There is, however, an element in the situation which may indicate why Nemesis may have chosen this particular moment for the display of her frolicksomeness. It will be remembered that both in 1897 and 1908 Government had shown a kind of tactical wisdom in prosecuting Mr. Tilak, when a dark back-ground had been prepared by the fact of political murders. The Demon of Hate had been roused, and roared for a sacrifice. And Mr. Tilak came handy to be shoved into his mouth. The judges on both these occasions honestly tried their utmost to be just; but they could no more escape from the dazing political bewilderment of the moment than from the very atmosphere which they breathed. The result was that Mr. Justice Strachey distorted the law of sedition, and Mr. Justice Davar gave an adverse charge to the Jury;

and now on the third occasion, having tasted the blood of success, Government recklessly went at Mr. Tilak, as soon as they felt the evil impulse and even against advice received. This time, however, there was in the back-ground nothing but the colourless and the innocent Home Rule movement. And the usual expectations of adverse High Court judgment against Mr. Tilak were doomed to failure. We believe, however, that Government will accept their present defeat in quite a sportsmanlike spirit, allowing Mr. Tilak to enjoy his one innings against the two they have won against him.

While we can have no overt evidence as to how Government will take the High Court judgment, we have already seen how Anglo-India takes it. The *Times of India*, recognising that discretion is the better part of valour, has unreservedly withdrawn all the remarks it had made about Mr. Tilak on the strength of the District Magistrate's judgment. But there are other Anglo-Indian Journals which show an unsubdued spirit of truculence. The most noteworthy among these is the *Madras Mail* which has written a singularly rabid article on the Tilak case in its issue of the 10th instant. The article is wholly devoid of any argument. The whole of it is one mad effusion of wickedness and anger. It blames the High Court for not convicting Mr. Tilak for the present speeches on the strength of his two convictions alone, recounts against him all that slanderous stuff which has been used by Sir Valentine Chirol in his notorious book, and calls upon Government to finally and completely break Mr. Tilak, as being a danger to British rule in India. The *Madras Mail* is thus quite full of the fury of a camp-follower; and we can imagine how it would have dealt with Mr. Tilak, if it had itself any power over him. To break Mr. Tilak! It should

have been, we believe, sufficiently realised by this time that to break Mr. Tilak is a forlorn hope. For Mr. Tilak represents not a physical entity but an idea. Nor have Government any grievance against his body but his spirit and the ideas he represents. To break Mr. Tilak physically is, we believe, easy enough. Government had come very near doing it in 1897-8; and the heart's desire of many an Anglo-Indian would have been fulfilled, if Government had not bent before the force of British public opinion in respect of his treatment in jail and improved the same. Similarly in 1908, Sir George Clarke did a great injury to blood-thirsty Anglo-Indians by commuting Mr. Tilak's sentence to simple imprisonment and giving special directions for his good treatment. Having acted before in that foolishly unrelenting spirit, Government will not perhaps now listen to the advice of the *Madras Mail* to finally break him. If they wanted to break him physically they had ample means to do so, even if they did not possess actually the torture machines of the Inquisition, the Star Chamber, or the Governor of the Bastile. But Government have wanted to break Mr. Tilak only mentally; and this they have failed to do. It was in their hands to give mandates to District Magistrates, to choose judges and even to revise criminal law. But none of these has set back by even so much as an inch the spirit of Mr. Tilak, nor the ideas he stands for. They have only advanced with his persecution, and will abide even when he is gone.

THE TILAK-CHIROL CASE *

A PRIVATE message from Mr. Karandikar, Mr. Tilak 's legal adviser, has now confirmed the news, received in India on Monday last through a semi-official source, that the jury in the Chirol case gave a verdict with costs against Mr. Tilak. To most men the verdict will be a disagreeable surprise, though we make no secret of our belief that to a small and well-known class of people it must have been a source of feigned or unfeigned delight. There is, however, an appeal or two provided by law against this judgment, and those who know Mr. Tilak need not be assured that he will not rest till he has exhausted all the remedies still open to him for getting a judgment in his favour. The possibility of an appeal, which, we believe, must be already in course of presentation, requires that those who disapprove of it must observe reticence if not absolute silence. Still without impugning the verdict, we may say that unhappily, in this matter, the counsel for the defendant was allowed to back his argument with the terrible momentum of the prestige of the Government of India, and even the considerations of the safety of the British Empire in India ! It is almost too much to expect that a British jury, empanelled in a war atmosphere, would keep that strict detachment of mind which is necessarily required in rightly judging of a semi-political case like this. Jurors are, after all, human beings and they cannot be expected to maintain a super-human temperament. It is, therefore, in our opinion, the fault of the psychological moment when Mr. Tilak's case came before the jury,

* From the *Mahratta* dated 2nd April 1919

more than the fault of the jury itself, that a verdict of this kind should have been given.

Just as nothing succeeds like success, nothing fails also like failure. And though, after the event, some people may be disposed to impeach Mr. Tilak's judgment in taking his case to a British tribunal, and some may even say with malicious sarcasm that he has got the profoundest British justice with a vengeance at the hands of a deliberately chosen tribunal, we, for one, are firmly convinced that the course adopted by Mr. Tilak was after all the right course. He was apparently going in for high stakes, but if he erred, he erred, we think, on the right side. Though a trial by jury is so far the most approved method of obtaining justice, still the world is not oblivious to the apparent shortcomings of human jurors, especially jurors of a foreign and dominating race. Those who have read Morley's *Life of Gladstone* may be reminded of the fact that it was mainly owing to this patent knowledge of the human character of a jury, that Mr. Parnell was presented with an insoluble dilemma by a terrible accusation, nearly on all fours with what has been haunting Mr. Tilak. By a curious coincidence, the proprietors of the London *Times*, who are defendants in Mr. Tilak's case, were also to be the defendants in the case of Mr. Parnell, when, on the slender basis of a forged letter, and on the more solid basis of the *Times'* own malice, that paper wrote a series of articles, as in the present case through Sir V. Chirol, seeking to establish a nexus between Mr. Parnell as the leader of constitutional agitation in Ireland and certain murders which happened while this agitation was going on. The story goes that when Mr. Parnell took counsel with his legal advisers as to the venue of a prosecution and the choice of a tribunal, he was flatly told that he

could not hope to get a vindication of his character by a trial by jury either in England or in Ireland; and obviously there was no third place in which he could bring the *Times* to a trial at all. He was advised that, if the trial took place in England, the jury would necessarily give a verdict against him, whereas if the trial took place in Ireland the jury would necessarily give a verdict in his favour. Success in one place would, however, be as bad as failure in another so far as the main object of Mr. Parnell in bringing the *Times* to a trial was concerned, viz., a popular vindication of his character. Mr. Parnell, therefore, was advised to do nothing for a time, and the dilemma was eventually solved only when the House of Commons could be persuaded to appoint a special Parliamentary Commission for trying the charges against Mr. Parnell. This shows that cool-headed legal luminaries in England make no secret of their belief that a British jury cannot be depended upon for giving a dispassionate verdict when the red herring of prestige and politics is likely to be drawn across the path of judgment. We personally know that Mr. Tilak was not unaware of this fact. The dilemma before him was not less puzzling than that which confronted Mr. Parnell. If he laid the venue of his prosecution in India, the case could not be tried by a jury, and the judgment of a tribunal in India, though it may not be actually impugned as invalid, would be practically useless for all purposes of Mr. Tilak in England. The main mischief of Sir Valentine Chirol's articles in the *Times* was perpetrated in England at the centre of the British Empire. And who knows that a judgment obtained by Mr. Tilak in India would have the power of getting the book 'Indian Unrest' legally proscribed in England by an Indian Court's injunction? On the other hand, if

Mr. Tilak laid the venue of his prosecution in England, he could not be sure, for reasons which we have already indicated, that political considerations and the local atmosphere would not interfere with his getting a just verdict. There was thus an obvious risk both ways, and even those who may gloat over Mr. Tilak's failure will not, we believe, themselves fail to inwardly appreciate, if not admire, the courage with which Mr. Tilak ultimately chose a British Tribunal as the arbiter of his character.

If it be true that conscience makes cowards of us all, it must also be true in logical conversion that the singular courage, which Mr. Tilak showed in seeking justice at the hands of a British jury, proves that he had a clean clear conscience. Hopeful by nature, at least so far as British justice is concerned, Mr. Tilak was confident that in other times, and under other conditions, he would have got a favourable verdict at the hands of a British jury, especially as some of the counts of defamation practically left Sir Valentine Chirol no decent retreat. But even the sacred function of doing justice is a human function after all, and it is not Mr. Tilak's fault that the local environment happened to be peculiarly unfavourable. As a contemporary has pointed out, there are one or two arguments which prevail at present over a British jury with unfailing force. If Counsel either for plaintiff or defendant can somehow be allowed to mention only in one breath his opponent with German influence or a revolutionary propaganda, he may be sure of winning his case. And those who have read even the scrappy news of the proceedings in this case, cabled from England, know full well how adroitly Sir Edward Carson, the brazen-faced leader of the Ulster rebels, made use of the political considerations

available to him, though not on his brief. One could easily imagine the result when he put it to the jury that, if they gave a verdict in Mr. Tilak's favour, Mr. Tilak would go back to India, as if with a license, to openly preach with immunity bomb-throwing and assassination as a political weapon; and that Sir Valentine Chirol did not withdraw his accusations against Mr. Tilak because of the demoralising effect it would have upon the Government of India as the custodians of the peace and the safety of the Empire in India; in other words, that a verdict given in Mr. Tilak's favour would be practically a signed warrant for recalling the Government of India from India for ever. We do not wonder if a jury, drugged with such abominable poison, should fail to utter the proper word in giving its verdict. We, therefore, do not blame the jury so much as the conditions in which Sir Edward Carson could have a license to pollute the springs of British justice with the poison of imperial politics. As for Mr. Tilak, he is not a man, as even his opponents know, to be overcome with despair by such a verdict. The fight was mainly a strictly legal fight. And we refuse to believe that there would be the slightest difference by the verdict in the love and estimation of the Indian people towards him, as, we may also say, there would not have been the slightest difference in the official attitude towards him even if he had won the verdict. So there the matter must stand for some time, till any incidental developments take place.

TILAK—THE "FATHER OF INDIAN UNREST"*

[BY SJT. N. C. KELKAR]

MY close personal association with Lok. Tilak for over twenty-four years may perhaps be regarded as a disqualification in me to write anything like a formal obituary of him. But I take another view of the matter. The humblest may, I think, pay their tribute to the highest. And while I have myself been receiving, along with the two sons of Lok. Tilak, hundreds of messages of sympathy and condolence from others, I feel even I must for a moment take up a position of objective detachment and say a few words about the Lokamanya, if only to relieve my surging sentiments of admiration and gratitude to him. In doing so, however, I have to be brief and I will, therefore, give the go-bye to the hundred and one commonplaces that could be said with absolute truth about the grief which has overwhelmed his family, his friends, his party and his country, and will touch only three or four points of his character which, in my opinion, form the real key to his greatness.

There were certain very pronounced virtues in him which distinguished Lok. Tilak from his peers. At the beginning of his public career, he showed a love of sacrifice which endured to the end of his life. He was, on our side at any rate, the first LL. B. to start a secondary school which was indeed only a first step to the founding of a press and a newspaper. But even here the spirit of self-sacrifice, which actuated him to give up Law, was the dominating feature of the enterprise. Till 1891, he did not take a single rupee from the press concern for his

*From the *Mahratta* dated 8th August 1920

contributions to the newspapers the *Kesari* and the *Mahratta*. In 1891 he purchased the papers as a proprietory concern, but only burdened with a debt of seven thousand rupees, which took seven years more to liquidate and in the meanwhile he maintained himself on a Law class. It was only since 1899 that he could maintain himself with ease on the profits of the *Kesari*. But he always spent very largely on public business from these; in fact, the cash box of the *Kesari* was the main financial reserve for many a movement in the Maharashtra and elsewhere. He always obliged the rich as well as the poor by writing petitions and memorials for them without charging a single pie. And during forty years he wrote so many petitions that the emoluments earned from them would have amounted to a fortune. The scholarly books which he wrote did not, with the exception of the *Gita Rahasya*, bring him anything, and, by an irony of fortune, most of the profits of edition after edition of that famous philosophical work were spent to cover a deficit in the *Kesari* owing to the high prices of printing paper during the years of the war.

Steadfastness of friendship was another of his prominent virtues. The celebrated Adoption Case, which arose out of his trusteeship, accepted out of a mere duty to a friend on death-bed, cost him far more time and money on the whole than his imprisonment and prosecutions. The proceedings lasted off and on from 1901 to the end of his life. His latest triumph over his powerful litigant enemies was won in the Bombay High Court only one week before his death. Throughout this period he spent out of his own pocket over thirty-five thousand rupees of which not a single pie has yet been recovered. It would, I think, be difficult to find in all the annals of our public men an example of this nature. The adopted

boy is indeed a monument of good fortune, in that he got a man like Lok. Tilak as his patron and next friend.

The moral purity of Lok. Tilak's private life was another of his outstanding virtues. He was absolutely free from any unethical taint, and it was only because he had such a spotless character that he could always hold his head erect and his face unabashed amidst his enemies mercilessly, but it was not sufficiently recognised that he could do so mainly because he was not living in a glass-house himself. Would his enemies or Government have ever spared him if they could have found a single flaw in his character? The purity of private life was his unassailable stronghold.

As regards intellect, it is admitted on all hands that for acuteness and subtlety he had few equals in the length and breadth of the country. There were many who could display deeper depths of knowledge, wider expanses of sympathy a greater variety of tastes, and could diffuse much finer or sweeter aroma of culture around them. But in point of sheer intellectual acuteness and resourcefulness few could beat Lok. Tilak. With a wonderful instinct he always scored a bull's eye in argument, and hit the nail right on the head of the crux in any controversy. And the versatility of his intellect was even as great as his acuteness. He was equally at ease in discussing matters of controversy whether the question was one relating to the ethics of the Gita or the adaptation of the key-board on the English linotype to the Marathi composing system; the fixing of the birth-date of Shivaji or the most proper method of Marathi orthography; the revision by astronomical adjustments of the Hindu calendar or the latest development in the appliances of hand-spinning of yarn; the interpretation of an archaic vedic text or an obscure clause of the Police

Act. In fact, like Bacon, he could claim all departments of knowledge as his province; and with short notice he could arm himself well enough to give battle to the expert in any field. It is really doubtful which he loved more, politics or scholarship, though he actually devoted more time to the former.

As a writer he was extremely pointed and pithy. He was sternly logical, scornful of ornamentation, forceful and blunt, and mercilessly aggressive, and never gave quarter to the enemy. As a speaker also he commanded attention. Never a master of the subtle graces of the art of eloquence, his strength lay in the subject matter and argument. And on occasions his vehemence swept the field like a wild hurricane or slashing sleet. Always true to his own ground, he took the audience off its feet, and invariably remained conqueror of the situation.

But all these qualities, individually or in the aggregate could not have made Tilak what he was viz., the idol of the people and the man of the century. Lok Tilak's unparalleled popularity could not be adequately accounted for by high education, his urbane culture, his keen intellect, his learned scholarship, his versatile genius, his journalistic enterprise, his powerful eloquence, his purity of character, his steadfastness of friendship, his magnetic personality, his material self-lessness or even his towering patriotism. Some of these eminent qualities he shared with this or that leader in this or that province of India, or in his own Province for the matter of that. All these qualities together no doubt made him great, but what made him a hero among his people is something else. Heroism is described as a military attitude of the soul towards external evil, and the stout affirmation of one's ability to cope single-handed with an infinite army of enemies. This attitude characterised Lok. Tilak

throughout his life; and the particular form of external evil that he chose to fight against was the political domination of his country by foreigners. It is no use mincing matters here, and I for one am prepared to accept the choice epithets showeredon him by government and its minions as only tributes of praisein disguise to Lok. Tilak. Sir Valentine Chirol rendered a signal service to Lok. Tilak by describing him as the 'Father of Indian Unrest;' and I am quite sure that Tilak would not have sued Sir Valentine if the latter had stopped at that, and not vilified him by reflections upon his private character. *The Father of Indian Unrest' indeed!* A simpler and yet a pithier description of such a patriot as Tilak was can hardly be imagined. The rousing of a sense of self-respect in the Indian people, the creation of a hope of a bright future before them, the assertion of their full natural rights as a nation, and the infusion of a spirit of proud and even reckless defiance of anything that may stand in the way of all this—that was the main theme of all his idealism and realism. This theme he held in a relentless grip throughout his life, and like a consummate General concentrated all his powers and energies in life upon that single objective. That is why Government hated him, that is why those who differed from him disliked him, and that is also why the people in every part of the country loved him. In him they knew they ever had a stout and a faithful champion.

Heroism like this naturally took time to receive its recognition. But it came at last. Says Emerson:

"Heroism works in contradiction to the voice of mankind and in contradiction for a time to the voice of the great and good. Heroism is an obedience to a secret impulse of an individual's character. Now to no other man can its wisdom appear as it does to him. Therefore

just and wise men take umbrage at his acts until after little time be past they see it in unison with their acts. All prudent men see that the action is clean contrary to a sensual prosperity ; for every heroic act measures itself by its contempt of some external good. *But it finds its own success at last, and then the prudent also extol.*"

And so it was also with the heroism of Lok. Tilak!

AN ALL-INDIA TILAK MEMORIAL *

THE essentials of an All-India Memorial to the late Lokamanya Tilak are, in my opinion, the following :

(1) That it must be a big thing, to put it in the simplest words. (2) That it should be such as to appeal to all classes of people in the country. (3) That it ought not to have, as far as possible, a provincial, much less a local, habitation. (4) That it must have a direct relation to the particular qualities for which Lok. Tilak was so famous and popular.

As regards (1), I think the collections on account of this memorial would properly be estimated at about 15 lakhs for all India or roughly between one and two lakhs for each province. I am sure that this estimate, though it looks rather ambitious, could be realised if the Congress leaders of every province will heartily associate themselves with the movement, and lend the benefit of their authority and prestige to the younger, the more active, and the more enthusiastic Congressmen in their province. Regarding (2) and (3), I am of opinion that only a political memorial will answer this description. Lok. Tilak was a politician first and everything else afterwards. He was till the last a loyal Congressman, and if the proposed memorial can bring into relief the close association between Lok. Tilak and the National Congress, it would not fail to appeal to the country at large. It would be admitted that an All-India Memorial to the late Lok. Tilak must be incorporeal and not

* From a circular letter addressed to the members of the All-India Tilak Memorial Committee appointed at Calcutta by the A.I.C.C. and published in the *Mahratta* dated 26th September 1920

in the nature of a statue, a building or a library which cannot but have a local habitation and therefore must be confined to one only of the several provinces of India. It is not rational to assume that the people from all provinces will respond with equal cheerfulness to the call for subscriptions to a memorial which could be visualized or used in one province only. On the other hand, the mere multiplication of the exact mechanical replica of a tangible memorial in the same form in all the provinces will be meaningless or unsuitable to the conditions of the different provinces. Regarding (4), I may mention that the latest idea in the development of Congress propaganda, on which the attention and the heart of Lok. Tilak was concentrated, was a permanent mission and consulate to settle and work in foreign countries, more especially America, England, France, Germany and Japan. It is a form of Congress propaganda which has been tried in the past, but only to a very limited extent even in England through the British Congress Committee. But the possibilities of the said propaganda, in a more energetic manner and on a more extensive scale, in countries other than England are probably very great but have yet to be investigated for practical purposes by an actual experiment. Lok. Tilak was already independently supplementing, through his Home Rule League, the efforts of the Congress by way of helping the propaganda in America, and I could definitely say that he returned from England more than ever impressed with the urgency of the work of foreign political propaganda. If this particular form of a memorial to Lok. Tilak were eventually fixed upon, it will, in my opinion, combine in the highest degree the elements of propriety as well as utility of a memorial to him.

My definite proposal, therefore, would be something

like this:—A sum of 15 lakhs of rupees should be collected by the united efforts of the Congress leaders in all provinces to be devoted to the idea of an All-India Memorial to Lokamanya Tilak, and the amount of the annual interest on the sum, which would come to not less than Rs. 90,000 a year, should be spent entirely on the work of active political propaganda in foreign countries. With a financial provision so secure, it would be easy to induce Indian publicists, speakers and organisers of first class ability and some experience, to work as permanent or temporary members of the proposed Indian mission or consulate. It would be possible with this income to keep up a continuous succession of at least four or five good men to work simultaneously in England, America, France, Germany and Japan and at the head-quarters of the League of Nations. It is difficult at present to get Indians, equipped with a sound knowledge of modern European languages, who would work on the staff of such a mission or consulate; but the prospect of permanent financial provision is likely to stimulate the study of these languages in men, who intend to take the career of a publicist or a professional full-time political worker. The benefits arising from direct relations with leading journalists, politicians and statesmen in foreign countries need only to be mentioned to be appreciated. At present, the Congress suffers both from the lack of a large fixed financial provision for propaganda work and a lack of capable representatives to work on its mission abroad. As between the two, however, the second need is very likely to be supplied adequately if the first is secured; and who knows that the opportunity afforded by the idea of an All-India Memorial to Lok. Tilak may not serve also to solve the problem of a permanent Congress Mission and Consulate in foreign countries.

A word may be said, in conclusion, by way of proposals for the control and the management of the proceeds of the Memorial Fund. The Congress is indisputably a body invested with the highest patriotic sentiment and political authority in the country; and the Congress again is a more permanent institution and organisation in the country than any other that could be thought of in this connection; the fortunes of an All-India Tilak Memorial may, therefore, be safely handed over to the custody of the Congress. Legal steps may indeed be taken by the Congress in the beginning to appoint trustees to hold the amount of the Tilak Memorial Fund as legally vested in them and also to provide for succession to them in case of necessity. But the trustees need do no more than collect periodically the amounts of interest accruing on the funds. The actual disposal of the proceeds of the fund from year to year may be left to the All-India Congress Committee or a body coming in its place under any new constitution of the Congress. Such a body is and must always be expected to be thoroughly representative for all India. Further, as the object of patronage, that is to say, the posts on the mission or the consulate would be at least four or five, sufficient scope will be afforded both for the play and the satisfaction of provincial ambition and aspiration. With the management of the funds thus left to the All-India Congress Committee, the idea of the abuse or misappropriation of the proceeds of the Memorial Fund may safely be discounted out. It should however be made a condition of the trust that no part of the proceeds of the Memorial Fund may be spent on any routine Congress work or establishment in India. These are my ideas, sketched in a rough and a crude fashion, about a scheme for an All-India Tilak Memorial.